

THE  
L A W  
Concerning  
Pawn - Brokers and Assurers:  
Containing

ALL the STATUTES and CASES  
in Law and Equity extant, which relate  
to **Pawns** and **Usury**, disposed under  
proper Heads.

Particularly Shewing,

What *Interest* and *Property* a Pawn-Broker, and  
the Pawnor, have in Things pawned; how  
Pawns may be *used*; when, by whom, and on  
what Terms *redeemed*; when *sold*; and the  
Consequence of their being *damaged*, *stolen*, or  
*lost*; and the *Proceedings* relating to Pawns.

A L S O,

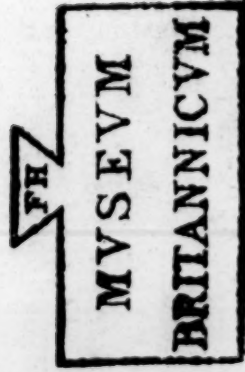
What *Usury* is; what Courts have Jurisdiction of it;  
when usurious Contracts, as Bonds, Covenants, &c.  
are void; the Effect of paying Money before it is  
due; where a Receipt of Money is usurious, or  
Acceptance of Goods in Lieu thereof. Proceedings  
in Cases of Usury, &c.

Concluding with

A SUMMARY of the Whole, with REMARKS,  
suited to the Capacities and Uses of the Common  
People, or those who are unacquainted with Law-  
Terms, &c.

In the S A V O Y :

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I B le d k P N ro so p cu (et be ce b



## THE

## PREFACE.

**T**HIS Book is intended for The In-  
*the Use of such as would* tent of  
*be acquainted with the* this Book.

Laws of England concerning Pawn-  
 Brokers and Usurers; both of which Difference  
 lend Money upon Interest, but take between  
 different Sureties: The first ta- Pawn-  
 king Household-Goods, Clothes, Tools, and Usa-  
 Plate, Jewels, &c. and the latter, rers.  
 Notes, Bonds, &c. from the Bor-  
 rowers, and oftentimes other Per-  
 sons jointly with them. Their re-  
 spective Methods are more parti-  
 cularly described in the Book it-  
 self, under proper Heads, as may  
 be easily seen in the Table of Con-  
 tents. But as to the Nature of  
 the Subject, the Conveniences and

Inconveniences attending Usury and the Proposals for remedying them, I shall make use of the Words of that Great and Learned Lord High Chancellor of England, the Lord Verulam, as published by Dr. Shaw, in the Second Volume of the Philosophical Works of that famous Lawyer, Page 117, 118. with some few Remarks.

The best  
Way of  
under-  
standing  
the Na-  
ture of the  
Subject.

‘ There are (says he) many  
‘ witty Incectives against Usury.  
‘ But since there is a Necessity  
‘ of Borrowing and Lending, and  
‘ Men are so hard of Heart as not  
‘ to lend gratis; it follows, that  
‘ Usury must be permitted. There  
‘ are but few who have treated  
‘ solidly and usefully of this Sub-  
‘ ject. The best Way is, to set  
‘ before us the Conveniences and  
‘ Inconveniences of Usury, that the  
‘ good may be either weighed or  
‘ separated: And again, to be-  
‘ ware, that whilst we receive a  
‘ Benefit from Usury, we be not  
‘ led into Snares.

‘ The

# The PREFACE.

V

*The Inconveniences of Usury* The Dis-  
*advan-*  
*tages of*  
*Usury.]*  
 ' are these: (1.) It lessens the  
 ' Number of Merchants; because  
 ' were it not for this lazy Trade  
 ' of Usury, Money would not lie  
 ' still, but be chiefly employ'd in  
 ' Trade, which is the Vena Porta  
 ' of Wealth to a State. (2.) It  
 ' impoverishes the Merchant: For,  
 ' as the Farmer cannot cultivate  
 ' his Ground so well, if his Rent  
 ' be large; so the Merchant can-  
 ' not trade so well, if he pays  
 ' great Interest for Money. (3.) It  
 ' lessens the Customs; which ebb  
 ' or flow with Commerce. (4.) It  
 ' brings the Coin of the Kingdom  
 ' into a few Hands; for the Usu-  
 ' rers Profit being certain, and  
 ' that of others uncertain, at the  
 ' End of the Game most of the  
 ' Money will be in the Box:  
 ' Whereas it is a Maxim, that  
 ' a State always flourishes most  
 ' when Money is not boarded, but  
 ' spread. (5.) It sinks the Price  
 ' of Land: For Money is either

‘ employed in Trade or Purchasing; but Usury seems to intercept them both. (6.) It cramps a.l Industry, Improvement, and new Inventions; wherein many would be employed, if it were not for this Slug. (7.) And lastly, It is the Canker and Ruin of many Estates; which in Time occasions a National Poverty.

Its Advantages.

‘ The Advantages of Usury are these: (1.) However in some Respects it may hurt, yet in others it promotes Trade; the greatest Part whereof is carried on by young Merchants, upon borrowing at Interest: Whence if the Usurer either call in, or refuse his Money, a great Stagnation of Trade will presently ensue. (2.) If this easy Borrowing upon Interest did not relieve Men in their Necessity, they would soon be reduced to the utmost Extremities, and forced to sell their Lands or Goods.

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‘ Goods at an under Price: And  
‘ thus, whereas Usury does but  
‘ gnaw upon them, these hasty  
‘ Sales would devour them. Mort-  
‘ gaging or Pawning will bere  
‘ afford no great Relief; for ei-  
‘ ther Men will not take Pledges  
‘ without Use; or if they do, will  
‘ act to the Rigour, and take the  
‘ Forfeit, in case the Payment be  
‘ not punctual. I remember (says  
‘ he) a hard-hearted rich Man,  
‘ who used to say, The Devil take  
‘ this Usury; it keeps us from For-  
‘ feitures of Mortgages and Bonds.  
‘ (3.) Lastly, ‘Tis Vanity to con-  
‘ ceive there should be an easy  
‘ Borrowing, without Use; and  
‘ ‘tis impossible to conceive the  
‘ numberless Inconveniences that  
‘ will ensue, if Borrowing be  
‘ cramped. Therefore to think of  
‘ totally abolishing Usury, is a  
‘ Notion only fit for Utopia; for  
‘ all States tolerate the Thing,  
‘ under one Rate of Interest or  
‘ other.

A 4

‘ It

Its Regulation, by introducing two Sorts.

‘ It appears upon thus balancing the Conveniences and Inconveniences of Usury, that there are two Things to be reconciled; the one, that the Teeth of Usury be ground, that they bite not too much; the other, that a Way be opened for inviting money’d Men to lend the Merchant, for the continuing and quickening of Trade. And this cannot be effected without introducing two Sorts of Usury; a less, and a greater: For if you reduce Usury to one low Rate, this will indeed ease the common Borrower, but the Merchant will be to seek for Money. And the Trade of the Merchant being the most gainful, might bear a bigger Interest than other Contracts.

The first.

‘ To answer both Intentions, there may be two Rates of Usury; the one free for all; the other under Licence, and restrained to certain Persons, and certain Places of great Commerce. First, there-



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therefore, let *Usury* in general  
be reduced to \* Five per Cent.  
Let this Rate be proclaimed  
current, and let the State re-  
nounce all Penalty for the same.  
This will preserve Borrowing  
from any general Stop or Dis-  
culty, ease numerous Borrowers,  
and in good Measure raise the  
Price of Land; because the  
Land in England, at sixteen  
Years Purchase, will yield a-  
bove Six per Cent. whereas the  
above mention'd Rate of Interest  
yields but Five. Lastly, This  
will encourage Industry, and the  
Discovery of useful Improve-  
ments; because many will ra-  
ther venture this Way, than take  
up with Five per Cent. espe-  
cially as having been used to  
greater Profit.

\* This is done since Lord Bacon's Time, by  
an Act of Parliament made 12 Ann. Stat. 2.  
c. 16. See the same, p. 62. in this Book.



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‘ Secondly, Let there be cer-  
 ‘ tain Persons licensed to † lend  
 ‘ to known Merchants, and no  
 ‘ others whatsoever; and this  
 ‘ under the following Cautions.

(1.) Let the Interest be somewhat  
 ‘ lower than that they formerly  
 ‘ paid; whence all Borrowers,  
 ‘ as well Merchants as others,  
 ‘ will be eased by this Reforma-  
 ‘ tion. (2.) Let the State be  
 ‘ paid some small Acknowledg-  
 ‘ ment for each Licence, and the  
 ‘ rest go to the Lender: For if  
 ‘ the Diminution be but small to  
 ‘ the Lender, he will not be dis-  
 ‘ couraged from Lending. Thus,  
 ‘ if he before took Ten or Nine  
 ‘ in the Hundred, he will sooner  
 ‘ descend to Eight, than give over  
 ‘ his Trade of Usury, and change

† The Bank may borrow Money at any In-  
 terest they think fit. And so may the South-  
 Sea Company: But for no less Time than six  
 Months. And no Persons in Partnership, ex-  
 cept the Assurance-Corporations, may lend Money  
 by way of Bottomury. See Page 66. post.

' Certainty for Hazard. (3.) Let  
 ' there be no determinate Number  
 ' of these licensed Lenders, but  
 ' let them be restrained to certain  
 ' principal Cities and Towns of  
 ' flourishing Trade; for then they  
 ' will have no Opportunity of  
 ' Lending, under the Pretext of  
 ' Licences, other Mens Money in-  
 ' stead of their own: Nor will  
 ' the licensed Rate of Nine or  
 ' Eight thus swallow up the ge-  
 ' neral Rate of Five; since no  
 ' Man will chuse to lend his Money  
 ' far off, nor trust it in unknown  
 ' Hands.

' If it be objected, that this An Ob-  
 ' Scheme would authorize Usury, the Pro-  
 ' which before was in some Places posal an-  
 ' only permissive; I answer, that  
 ' 'tis better to mitigate Usury by  
 ' Declaration, than suffer it to  
 ' rage by Connivance.'

And now, notwithstanding the  
 Penalties Usurers are liable to by  
 the late Statute, if they take more  
 than

than Five per Cent. yet those especially, who make it their Business to lend Money, still continue, by Connivance, to take what Interest they please; knowing, that to prosecute them in the Manner prescribed by the said Statute, would be expensive, particularly to the Necessitous, with whom they chiefly deal. And the various Contracts are generally made in the Name of some Person not worth a Groat, (instead of the Usurer's Name) and the Interest is deducted out of the Principal at the same Time it is lent, in order to evade the Statute. So that, for the most part, the Usurers escape unpunished, for want of easier Remedies.

Regulations as to Pawn-Brokers.

As to those who lend Money on Pledges or Pawns, there seems to want some Regulations. First, As to what Money they ought to take: For certainly they deserve to be paid for their Labour, Attendance, and Warehouse-Room,

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*as well as for the Loan of their Money. Secondly, As to the Time of Redemption. A shorter Time than what is now allowed by Law, and somewhat longer than the Pawn-Brokers pretend to allot, should be fixed; so that neither the Borrower nor Lender should be put to the Inconveniences they are at present. 'Tis true, the Statute of Limitation of Actions, in some Measure, moderates this Grievance, by barring each other from Suits after a certain Time: For by that Statute an Action on the Case upon Promise, Account, (except such Accounts as concern the Trade of Merchandize between Merchant and Merchant) Debt, (upon Lending or Contracts, without Specialty or Arrearages of Rent) Detinue, Trover, &c. must be brought within six Years after the Cause of Action. Yet that Statute does not near answer the End proposed.*

2

*Till*

The Usefulness and Contents of this Book.

*Till such Remedies as before mentioned are provided, the following Book must certainly be of great Use, as it contains all the Acts of Parliament, or Abridgements of them, which relate to Pawn-Brokers and Usurers; and likewise all the Cases and Resolutions in Law and Equity contained in the Reports, which concern the same, disposed under proper Heads. And for the Ease of such Persons as don't chuse to read the Statutes and Cases at large, the last Section, which begins at p. 140. contains a Summary of the whole, with Remarks, and References to the foregoing Pages, where the same is at large, and the Authorities cited. This Summary is also suited to the Capacities of the common People unacquainted with the Law, and the Terms thereof.*

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INTRO-

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## INTRODUCTION.

1. **A** Pledge or Pawn is where Goods and Chattels are delivered in Security for Money lent.

2. And a Pawn - Broker (or more properly Fripperer or Pawn-Taker) is he who lends the Money. See *Stat. 1 Jac. 1. c. 21. Page 13. post.*

3. Frippery imports the Trade or Traffick of old Second-Hand Cloaths and Goods.

4. The Company of *Frippiers* or *Frippers* at *Paris* are a regular Corporation, of an antient Standing, and make a considerable,

B

Fi-

## INTRODUCTION.

Figure among the Communauts of that City.

5. In the Cities in *Italy* there are Companies established by Authority for the letting out Money on Pawns, called *Mounts of Piety*, tho' the Loan is not *gratis*.

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THE

THE

## LAW

Concerning

Pawn - Brokers and Usurers.

## S E C T. I.

Of the Interest which the Pawnor  
and Pawnee have in the Goods  
pawned.

**I**F *A.* pawns Goods to *B.* and afterwards *A.* is attainted of Felony, yet the King shall not have the Goods thus pawned without paying off the Sum for which they were pawned, because neither of them has the absolute Property in the Goods so pawned. *Bro. Pledges, pl. 31. Bullstr. 17.*

B 2

2. But

## Interest in Things pawned.

2. But the King may redeem them on paying the Money. *Telv.* 178.

3. In an Action of Trover and Conversion of an Hatband set with Pearls and Diamonds: Upon Not guilty pleaded a Special Verdict was found, that the Plaintiff was possessed thereof, and pawned it to *John Whitlock* for 25*l.* but no certain Time appointed for the Redemption thereof; that *Whitlock* being sick, his Wife in Presence, and with his Assent delivered it to the Defendant, and afterwards he made his said Wife his Executrix, and died, who proved his Will; that the Plaintiff tendred to the said Executrix the said 25*l.* who refused, and afterwards demanded the Hatband of the Defendant who refused to deliver it, but converted it to his own Use; whereupon, &c. And in this Case three Points were moved; *First*, There being no Time appointed for the Redemption, whether it may be made after the Death of him to whom it was pawned, or ought to be in the Lives of both the Parties: And all the Justices resolved, It may be well made after the Death of him to whom it was pledged, but not after the Death of him who pledged it.

## Interest in Things pawned.

it. *Telverton* and *Croke* doubted, and held that it could not; for he at his Peril ought to redeem it in his Time, as it is upon a Mortgage: But *Fleming* and others against it; for Pledging does not make an absolute Property, but is a Delivery only until he pays, &c. so it is a Debt due unto the one, and a Retainer of the Thing unto the other; for which there may be a Re-demand at any Time upon the Payment of the Money; for the Pledge delivered, is but as Security for his Money lent; so as he who borrows the Money is to have again his Pledge when he repays it, and his Tender gives him Interest therein: And there is a Difference between Mortgage of Land and pledging of Goods; for the Mortgagee has an absolute Interest in the Land, but the other has but a special Property in the Goods, to detain them for his Security. *Secondly*, It was resolved, that by this Delivery of the said Goods by the Wife, with the Assent of her Husband, to the Defendant, there passed no Interest of them to the Defendant, but (as it were) a Custody only: And therefore the Tender of the Redemption



ought to be made to the Executrix, and not to the Defendant. *Thirdly*, That when he tendered the Money to the Executrix, and she refused, it was as good as Payment; and the especial Property of the Goods is re-vested in the Plaintiff: Then when he demanded them of the Defendant, and he refused to deliver them, but converted them to his own Use, a Trover and Conversion well lies, altho' he came unto them by a lawful Delivery, and not by Trover; wherefore it was adjudged for the Plaintiff. *Sir John Ratcliff v. Davies, Hill 7 Jac. Rot. 1217. Cro. Fac. 244.*

Pledge,  
what.

4. In the old Books it was held that a Pledge could not be but where the Thing is delivered by Command of the other to take it, and at the same Time; and this is properly a Pledge; but if a Man commands another to take and retain it till he be satisfied of such a Debt, this is no Pledge, because he had not Possession of it before. *Bro. Trespass, pl. 721. Bro. Pledges, pl. 20.* But by later

\* 2 Leon.

\* Authorities it appears that a Pawn-Broker has a special Property, though Xelv. 164. it be not delivered at the Time of the

Money lent; as if *A.* be indebted to *B.* and



and delivers Goods to C. in Satisfaction for the Debt of B. the Property is thereby altered, and the Right to the Goods is vested in B. So it is where the Goods are delivered to C. in Security of the Money of B. there B. has a special Property in them; and in these Cases A. cannot countermand such Delivery to C. or take the Goods back again, because the Property of these very Goods is vested in B. for here there is a Consideration to alter the Property, and that is the Debt due to B. so that it is not a bare naked Donation which the Party may possibly revoke before the Possession be vested in B. himself, for *ex nudo pacto non oritur actio*; for there is no Consideration to found an Action on a naked Donation; but here there is a Consideration to alter the Property; so that upon the immediate Delivery of the Goods the Property is vested in B.

5. Before these Resolutions that Dyer 49. the Property was altered by the Delivery of the Goods by A. to the Use of B. the only Remedy for such Goods, when countermanded, was in Equity upon the Consideration; for it was ever thought altogether in-

inequitable that such Delivery of the Goods upon a valuable Consideration should be countermanded at Pleasure. 1 *Bac. Abr.* 238, 239.

Whether  
Goods  
pawned  
shall be taken in  
Execution.

6. If a Man delivers Goods in Pledge for 40 *l.* borrowed, and after the Debtor is convicted in 100 *l.* in Debt to another, those Goods shall not be put in Execution till the 40 *l.* be paid, for the Creditor has Interest in it. *Bro. Pledges, pl.* 28.

7. In an Action on the Case upon an *Assumpsit*, the Plaintiff declared that *Lovet* was indebted to him in a certain Sum of Money, for which he pawned to the Plaintiff certain Goods to the Value of 100 *l.* and the Defendant promised the Plaintiff to pay the Debt if he would deliver the Pawn; and hereupon the Defendant demurred: And two Points were moved, one to the Form, and the other to the Matter. First, The Plaintiff declared that the *Assumpsit* was for *divers Goods and Chattels* delivered to *Lovet*, without shewing what Goods or of what Kind; for this is the Consideration of the Contract, and therefore ought to be pleaded in Certainty; but resolved by the Court that the Plea was good, for the Goods themselves

selves are not to be recovered in this  
 Action, nor Damages for them; and  
 so they are but collateral to the Ac-  
 tion, as in 10 *Ed.* 3. 30 in a *Rescous*.  
 The Count was for taking of Cattle,  
 without shewing what Cattle, and the  
 Jury found them to be two Horses,  
 and the Plaintiff had Judgment;  
 where note that a Verdict did help  
 an insufficient Count; and 22 *Ass.*  
 21 *Ed.* 3. a Trespass was brought for  
 taking away of Writings concerning  
 Land, without shewing what they  
 were, or the Quality of the Land;  
 but otherwise in a Detinue for Char-  
 ters, for there the Writings them-  
 selves are to be recovered. The se-  
 cond and great Doubt was, when a  
 Man promises to another, that if he  
 will deliver the Pawn he will pay the  
 Debt, if this be a sufficient Considera-  
 tion to maintain an *Assumpsit*. *Foster*  
*Justice*: It is not; for he that has  
 the Pawn has not such an Interest in  
 it as he may deliver it over to another,  
 or make a legal Contract for it; and  
 that his Delivery being illegal, he  
 cannot by his own Wrong raise an  
 Action to himself; and a Man shall  
 never maintain any Action where the  
 Consideration is illegal and not va-  
 luable.

luable. 9 *Ed.* 4. In an Action on the Case the Defendant pleaded an Accord, and that he delivered the Writing to the Plaintiff which concerned the Land; and it was held no Plea, because the Plaintiff having Land, the Writings belonged to it, and cited *Reynold's Case*; where a Man promised another 100 *l.* to solicit his Business; and it was holden that no Action would lie for the Money, because the soliciting his Business was illegal, he being no Man of Law. *Dyer* 355, 356. *Coke, Warburton* and *Daniell contra*, who said that the Consideration was good, legal and profitable, and sufficient to maintain an *Assumpsit*; for he who has Goods at Pawn has a special Property in them; so that he may work such Pawn, if it be a Horse or Ox, or may take the Cows Milk, and may use it in such Manner as the Owner would; but if he misuseth the Pawn an Action lies; also he has such Interest in the Pawn as he may assign over, and the Assignee shall be subject to a Detinue, if he detains it upon Payment of the Money by the Owner; as in the 2 *Ass.* Land was leased until he had raised 100 *l.* he hath such

Of working  
Horses  
&c.  
pawned.

In-

Interest as is grantable over. And *Foster* agreed to this, because he had Power to satisfy himself out of the Profits. And it was agreed by the Court, that if a Man takes a Distress, he cannot work the Distress, for it is only the Act of the Law that gives Power to the Distress; for he hath no Property in the Distress, nor Possession *in jure*, as in the 21 *H. 7. Replevin*. A Man hath Return irreplevisable, he cannot work them; for the Judgment is to remit them to the Pound, *ibid. remanfurum. Vide* 13 *R. 2. Brook* 20. *H. 7. i. a.* 34 *H. 8. Br. Pledges* 28. 22 *Edw.* 4. 11. Goods pawned shall not be put into Execution until the Debt be satisfied. And it was agreed by *Coke* and *Warburton*, that when a Man hath a special Interest in any Thing by Act in Law, that he cannot work it or otherwise use it; but contrary upon a special Interest by the Act of the Parity, as in Case of a Pawn. *Daniell*: There is a Difference between Pawns, which are chargeable to the Parties, as Cows and Horses, and Things that are not chargeable; and also there is a Difference between Pawns that will be the worse by Usage, as Clothes,



Clothes, &c. for if the Pawn be worse by Usage, an Action of the Case will lie against him that hath them pawned to him; but *contra* of Goods that are not worse for Usage. *Coke*: If I deliver Goods to you, until you are promoted to a Benefice, you may use them; which *Foster* denied; and Judgment was given for the Plaintiff, and that they may be granted over, and so a good *Assumpsit* will lie. *Mic. 7 Jac. Mores v. Conbam, Owen 123, 124.*

8. Upon the Tender of the Money secured by the Pawn, by the Pawner or his Executors, the Property notwithstanding the Refusal is reduced instantly to the Pawner, &c without Claim; but *per Curiam* the Executor shall have *Debt* for the Money against the Pawner, for upon the Redemption it remains a Duty. *Trin. 8 Jac. B. R. Sir J. Ratcliff v. Davies. Telw. 178.*

1 Bull.

31.

Owen

124. su-

pra.

9. Some have held that upon a valuable Consideration a Pledge is assignable over, and that on such Assignment the Tender of the Money from the Pledger must be to the Assignee, because the Pawn-Broker has a special Property, and what he has he may transfer over. 1 *Bac. Abr. 239.*

10. But



10. But if a Thing is not in my Possession, I cannot grant it as a Pawn, tho' I have a Right to it, for a naked Right is not transferable over. 2 *Roll. Rep.* 439.

11. By an Act against Brokers made 1 *Jac.* 1. c. 21. it is recited, that forasmuch as of long and antient Time by divers hundred Years there Sale of have been used within the City of Goods <sup>purloined</sup> *London* and Liberties thereof certain <sup>in London,</sup> Freemen of the City to be selected <sup>shall not</sup> out of the Companies and Mysteries alter the whereof they are free and Members, Property. and the same Persons to be presented at least by six approved and known honest Persons of the same Mystery to the Lord Mayor of *London* for the Time being, and to the Aldermen his Brethren, and to be recommend- The Man- ed by such Presentors to the Persons <sup>ner to pre-</sup> for their known approved Honesty, <sup>sent and</sup> Integrity and Faithfulness, Persons <sup>allow of</sup> meet for to be Broker or Brokers; <sup>Brokers in</sup> *London*. and upon such Relation made to the Mayor and Aldermen, and partly by their own Knowledge and diligent Enquiries made of the said Persons, and of their honest Fame, Report, Fidelity and Skill have been there- upon admitted, allowed and approved by

by the Lord Mayor of the City, and Aldermen in the Court of Aldermen, to be Brokers within the said City and Liberties of the same, and have taken their Corporal Oaths before the said Mayor and Aldermen, from Time to Time, as they were so presented and admitted, to use and demean themselves uprightly and faithfully between Merchant *Engliss* and Merchant Strangers, and Tradesmen, in the contriving, making and concluding Bargains and Contracts to be made between them concerning their Wares and Merchandizes to be bought and sold, and contracted for within the City of *London*, and Monies to be taken up by Exchange between such Merchant and Merchants, and Tradesmen; and these Kind of Persons so presented, allowed and sworn to be Brokers, as aforesaid, have had and born the Name of Brokers, and been known, called and taken for Brokers, and dealing in Brokerage or Brokery; (2.) who never of antient Time used to buy and sell Garments, Household-Stuff, or to take Pawns and Bills of Sale of Garments and Apparel, and all Things that come to Hand for Money, laid out and lent upon

The Differences between the antient and present Brokers.

upon Usury, or to keep open Shops, and to make open Shews and an open Trade, as now of late Years hath and is used by a Number of Citizens, assuming unto themselves the Name of Brokers and Brokerage, as though the same were an honest and lawful Trade, Mystery or Occupation, terming and naming themselves Brokers, whereas in Truth they are not, abusing the true and honest ancient Name and Trade of Broker and Brokerage.

12. And forasmuch as many Citizens, Freemen of the City, being Men of manual Occupations and Handicraftsmen, and others inhabiting and remaining near the City and Suburbs of the same, have left and given over, and daily do leave and give over their handy and manual Occupations, and have and do daily set up a Trade of buying and selling, and taking to Pawn of all Kind of worn Apparel, whether it be old or little worse for wearing, Household Stuff and Goods, of what Kind soever the same be of, finding thereby that the same is a more idle and easier Kind of Trade of living, and that there ariseth and groweth to them a more

The Abuse  
of Bro-  
kerage in  
these latter  
Years.

more ready, more great, more profitable, and speedier Advantage and Gain, than by their former manual Labours and Trade did or could bring them.

Frippers  
and no  
Brokers.

12. And forasmuch as the said Kind of counterfeit Brokers, and Pawn-Takers upon Usury, or otherwise for ready Money, are grown of late to many Hundreds within the City of *London*, and other Places next adjoining to the City and Liberties of the same, and are like to increase to far greater Multitudes, being Frippers and no Brokers, nor exercising of any honest and lawful Trade, and within the Memory of many yet living, such Kind of Persons, Traders, were very few and of small Number.

By what  
Means up-  
start Bro-  
kers do  
come by  
these  
Goods.

14. And forasmuch as there are not any Garments, Apparel, Household Stuff, or other Goods of any Kind whatsoever the same be of, either being stolen or robbed from any, or badly or unlawfully purloined or come by, but these Kind of upstart Brokers, under Colour and Pretence they be Freemen of the said City of *London*, or inhabiting in *Westminster*, where they pretend to have the like overt

Overt Market as the City of *London*, The In-  
and thereby presuming to be lawful conveni-  
for them to use and set up the same <sup>cies ensu-</sup>  
idle and needlless Trades, being the <sup>ing by up-</sup>start Bro-  
very Means to uphold, maintain and <sup>kers.</sup>  
embolden all Kind of lewd and bad  
Persons, to rob and steal, and un-  
lawfully to get, and come by true  
Mens Goods, knowing and finding,  
that no sooner the same Goods can  
be stoln, or unlawfully come by, but  
that they shall and may presently ut-  
ter, vent, sell and pawn the same to  
such Kind of new Upstart Brokers,  
for ready Money: (2) For Remedy  
whereof, and for the avoiding of the  
said Mischiefs and Inconveniences,  
and for repressing and abolishing of  
the said idle and needlless Trades,  
and upstart Brokers, and the avoid-  
ing of Thefts, Robberies and Felo-  
nies, and bad People, and for the  
repressing of such Kind of Nourishers  
and Aiders of Thieves and bad Peo-  
ple, and for the Defence of honest  
and true Mens Properties and Inte-  
rests in their Goods;

15. Be it enacted and declared by  
our Sovereign Lord the King, with  
the Assent of the Lords Spiritual and  
Temporal, and Commons in this  
present



The Sale  
of Goods  
wrongful-  
ly gotten  
shall not  
alter the  
Property  
of them.

present Parliament assembled, and by the Authority of the same, That no Sale, Exchange, Pawn or Mortgage of any Jewel, Plate, Apparel, Household Stuff or other Goods of what Kind, Nature or Quality soever the same shall be of, and that shall be wrongfully or unjustly purloined, taken, robbed or stolen from any Person or Persons, or Bodies Politick, and which at any Time hereafter shall be sold, uttered, delivered, exchanged, pawned or done away within the City of *London* or Liberties thereof, or within the City of *Westminster* in the County of *Middlesex*, or within *Southwark* in the County of *Surrey*, or within two Miles of the said City of *London*, to any Broker or Brokers, or Pawn-Takers, by any Way or Means whatsoever, directly or indirectly, shall work or make any Change or Alteration of the Property or Interest, of and from any Person and Persons, or Body Politick, from whom the same Jewels, Plate, Apparel, Household Stuff, or Goods were, or shall be wrongfully purloined, taken, robbed or stolen; any Law, Usage or Custom to the contrary notwithstanding.



16. And for the better maintaining of true and honest Dealing, and for the eschewing and avoiding of Falshood, Fraud and Deceit, in such Kind of Brokers and Pawn-Takers;

17. Be it furthermore enacted and A Broker established by the like Authority, upon Request that if any Person or Persons, or Bodies Politick, from whom any Jewels, Plate, Apparel, Household Goods be Stuff, or any Kind of Goods whatsoever, shall be wrongfully purloined, taken, stolen or robbed, shall require and demand of any such Broker or Pawn-Taker, to declare whether any such Goods be come to his or their Possessions, and to declare, shew and manifest the same, and how and by what Means he had them or came by the same, and how, when, and to whom he hath delivered, conveyed, or bestowed and employed the same, and that such Broker, upon any such Request and Demand to be made, shall deny and refuse to disclose, tell or manifest the same truly and justly, shall forfeit unto the true Owner or Owners of such Jewels, Plate, Apparel, Household Stuff, and other Goods, from whom the same were wrongfully purloined, taken, stolen or

or robbed, double the Value thereof that shall be denied and refused to be disclosed, told and manifested as aforesaid; the same double Value to be recovered by the true Owner or Owners of such Goods, from whom the same were wrongfully purloined, taken, robbed or stolen, to be recovered by Action of Debt, Bill or Plaint, in any of the King's Majesty's Courts of Record at *Westminster*, or within the City of *London*, in which no Effoin, Wager of Law, or Protection shall be allowed.

18. Provided always, That this Act, nor any Thing therein contained shall not be prejudicial or hurtful to the antient Trade of Brokers within the City of *London*, using and exercising the antient Trade of Brokers between Merchant and Merchant, or other Traders or Occupiers within the said City and the Liberties of the same, being selected, as aforesaid.

The antient Trade of Brokers.

## S E C T. II.

How a Thing pawned may be used, and in what Cases sold.

1. **W**HEN a Man has a special Interest in a Thing by Act in Law, he cannot work or otherwise use it; but where he has it by Act of the Party he may, as in Case of a Pawn; per two Justices. *Mich. 7 Jac. C. B. Moor ver. Conbam, Owen 124. See this Case at large before, p. 8. pl. 7.*

2. If the Pawn be somewhat that will be the worse for Wearing, as Cloaths, &c. the Pawnee cannot use it; but if it be somewhat that will not be the worse for wearing, &c. as Jewels, &c. the Pawnee may use them, but then it must be at Peril; for if the Pawnee is robbed in wearing them, he is answerable; and the Reason is, because the Pawn is so far in the Nature of a *Depositum*, that it cannot be used, but at the Peril of the Pawnee; and the using occasioned the Loss. But if the Pawn is laid up, and the Pawnee is robbed, the Pawnee is not answerable.

## Pawn how used, and when sold.

swerable. Also if the Pawn be of such a Nature, that the Keeping is of Charge to the Pawnee, as if it be a Cow or a Horse, the Pawnee may milk the Cow or ride the Horse; and this is in Recompence of the Keeping. 2 *Salk.* 522.

3. Where Goods are pawned, redeemable at a Day certain, the Pawnee in Case of Failure of Payment at the Day, may sell them. 3 *Salk.* 267. for then the Property is absolute at Law, but still the right Owner has his Redemption in Equity, as in Case of a Mortgage. *Co. Lit.* 205. *Shep.* 106.

*Tucker v. Wilson, Administrator of Thynn. Trin. 1714. In Chancery.*

Exchequer Annuity mortgaged may be sold upon Notice without a Foreclosure.

4. One possessed of an Exchequer Annuity for ninety-nine Years, borrowed Money upon it, and for securing this Money, there was an absolute Transfer of the Annuity, but with a Defeazance, that if the Money were paid at such a Day, the Assignment should be void. The Money was not paid at the Day; upon which the Lender frequently de-

When how used, and when sold.

desired the Money, and gave Notice that he would sell, and appointing a Time for that Purpose, desired the Borrower to be present to see that the Annuity was sold at the full Value. The Borrower, by Letter, desired that the Lender would stay a Week longer before he sold, which was also complied with; and then the Lender dying suddenly, the Defendant his Administrator, sold the Annuity at the Exchange, by a sworn Broker, for the full Value that these Annuities then sold for, and which was less than what the Money due to the Defendant amounted unto. These Annuities afterwards rose in Value; whereupon the Mortgagor brought a Bill to redeem or to compel the Defendant to purchase another Annuity on the same Fund, and of the same yearly Value, to be transferred to the Mortgagor on his Payment of Principal and Interest. *Lord Chancellor*: Here is no express Power to sell; and Annuities for ninety-nine Years are like Rent-Charges out of Lands, and not like Stocks, which may be thought to be of imaginary Value; and there being no Decree for foreclosing the Mort-



# **Pawn how used, and when sold.**

Mortgagor, nor any Agreement in Writing that the Mortgagee should sell; let the Defendant procure an Annuity of the like Value, and upon the same Fund, to be conveyed to the Plaintiff upon his Payment of the Principal and Interest to the Defendant; and let the Master compute what is due for Principal and Interest; from which Decree an Appeal was brought in the House of Peers, where it was insisted that these Exchequer Annuities, as well as Stocks were usually sold at the *Exchange*, and that this was but as a Pawn; and tho' there was no express Power to sell in the Defeasance, yet by the Mortgagor's Letter it was plainly submitted to, when the Mortgagor desired the Sale might be deferred for a Week; that the Convenience of these Securities among Merchants was, that after the Day of Payment past they were taken to be ready Money; and that it would be infinitely troublesome and dilatory, there could be no Sale of such Annuities thus pledged, without a Decree of Foreclosure; that this would set aside several Sales that had been made in the like Cases, and occasion



Multiplicity of Suits; that the Case here was the stronger, it being that of an Administrator, who was obliged to dispose of the Assets of the Intestate to pay his Debts and Legacies: Wherefore the Decree was reversed by the Lords, *Nemine contradicente*. Williams's Rep. 261.

## S E C T. III.

At what Time and on what Terms Goods pawned may be redeemed.

1. **W**HERE no Time of Redemption of a Pawn is agreed, he that pawns may redeem during his Life, but his Executor cannot redeem, for it is a Condition personal. *Trin.* 8 Jac. B. R. *Ratcliff v. Davis*, *Telv.* 178.

2. Where Goods are pawned generally, without any Day of Redemption, and the Pawnor dies, the Pawn is absolute and irredeemable; but if the Pawnee dies, 'tis not so. *3 Salk.* 267.

3. Where Goods are pawned, redeemable at a Day certain, the

<sup>1</sup> Roll.

<sup>2</sup> Rep. 215.

Pawnee

## When redeemed.

Pawnee in Case of Failure of Payment at the Day may sell them. *Id.*

4. A Man pawns Goods, and after is outlawed, during this Outlawry he cannot redeem them, *Per Williams, J. 1 Bullst. 29. Trin. 8 Jac. Ratcliff v. Davis*, because then the absolute Property is in the King; but if the Outlawry be reversed, then the outlawed Person is reinstated in his Property as if there had been no Outlawry, and therefore may redeem them.

5. *A.* pawned Jewels of 600*l.* Value for 200*l.* to *B.* and takes a Note, acknowledging the Jewels to be in *B.*'s Hands for securing 200*l.* and afterwards *A.* borrows more Money on several Notes, without taking Notice of the Jewels, and dies; Execution brought a Bill to redeem on Payment of 200*l.* But *Cooper C.* decreed Payment of the Notes, as well as the 200*l.* the Day of Payment being lapsed; but *Mr. Vernon* said, if there had been any Bond-Creditors, or a Commission of Bankruptcy against *A.* the Notes must be postponed, and *B.* could not have tacked them to the Pawn. *Mich. 1715. Ch. Prec. 420. Demandray v. Metcalf.*

S E C T.

## S E C T. IV.

## Of redeeming Deeds and Mortgages pawned.

**I**N a Cause between *Grace, Eleonor, Francis and Katherine Fitzjames*, Infants, by the Lady *Margaret* their Mother and Guardian, Plaintiffs, and *Thomas Fitzjames, Giles Strangewaies, and John Sadler*, Esqrs. Defendants. *Mich. Term 25 Car. 2.* in Chancery. The Case was, *Lewis Fitzjames*, the Grandfather of the Plaintiffs, was in his Life-time seised in Fee of the Manors and Lands in the Bill mentioned, and in the Counties of *Dorset* and *Somerset*, and being so seised did (for a Provision for his younger Children) by Deed, dated *Aug. 1, Anno 10 Car. 1.* grant the said Lands in *Somersetshire* to certain Trustees therein named, for the Term of ninety-nine Years upon Trust to pay out of the Profits, &c. to the Defendant *Sir Henry Fitzjames* his Son, and to his three Daughters (the Defendant *Sarah* being one of the three) the Sum of

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1000*l.*

1000 *l.* a-piece at their respective Ages of twenty-one Years, or Days of Marriage, and 30 *l.* *per Annum* to each of them for their Maintenance in the mean Time; and after the said several Sums of 1000 *l.* a-piece were raised, that they the Trustees should pay the Overplus (if any) to the Heir at Law of the said *Lewis Fitzjames*, and to assign and surrender the Remainder of the said Term to such Heir, lest it should be kept on Foot to prejudice the Inheritance of the said Lands; after the Death of the said *Lewis* the Reversion of the said Lands, and the Equity of the said Lease (after the Trust discharged) descended to Sir *John Fitzjames* the Father of the Infants (now Plaintiffs) who in his Life-time discharged all the Portions and the Trust, excepting only the Sum of 200 *l.* or thereabouts, which still remained due to the Defendant *Sarah*, the remaining 800 *l.* being otherwise well secured to her. That Sir *John Fitzjames* (the Plaintiff's Father) for the better securing and settling his Lands in *Dorsetshire*, and also in *Somersetshire*, to him and his Heirs, did levy two Fines, and suffer common Recoveries thereof to  
bar

bar the Estate-Tail, (in Case there was any such Estate) and to make himself Tenant in Fee-Simple, and by Deed duly executed, declared the Uses of the said Fines and Recoveries to be to him and his Heirs forever, excepting such Part of his Lands in *Dorsetshire*, which were then in Jointure to his Wife, and afterwards, (*viz.*) 21 *June* 1670 he died, leaving Issue the Plaintiffs, being Infants, his Daughters and Coheirs, and likewise Sisters and Heirs to *Margaret* another of his Daughters, who is since dead without Issue, which said Daughters and Heirs (the now Plaintiffs) have contracted with several Persons for the Sale of some Parcels of the said Lands comprized in the said Lease for ninety-nine Years in Trust, as aforesaid, and have offered their Aunt, the Defendant *Sarah*, to pay her the Remainder of her Portion secured by the said Deed, so as it may be delivered up to them to enable them to proceed in the Sale; but she, together with *Thomas Fitzjames*, another of the Defendant's, do pretend that he hath a Title to the said Lands by Virtue of some Entail or Settlement.

C 3

The



## Redeeming Deeds

The Trustees were all dead, and the Defendants *Strangwaies* and *Sadler* were the Executors of the two last Survivors of them, and the Bill was exhibited against all the said Defendants, that they must assign the said Deed of Trust to the Plaintiffs, upon paying what is due to *Sarah*, and that the other Defendants may discover and set forth their Title, &c. The Defendant *Sarah* answers, that the said Deed of Trust was then in her Possession, being deposited with her by her said Brother Sir *John Fitzjames* (the Plaintiff's Father) for securing 300 *l.* which he borrowed of her, and 250 *l.* more, which remain unpaid of her Portion, and hopes she shall not be compelled to deliver up the Deed till the said Sums are paid, especially since *Thomas*, the other Defendant, claims a Title as Heir in Tail, &c. his elder Brother Sir *John* being dead without Issue Male, and leaving only Daughters the now Plaintiffs. The Court decreed, that the Benefit of the said Lease and Trust ought to go to the Plaintiffs upon Payment of 700 *l.* to *Sarah*, for which the said Deed remains with her



her as a Security; \* and that she and the other Defendant, who are Executors of the surviving Trustees, shall assign and convey the said Lease and all their Estate and Interest therein to the Plaintiffs, or to whom they shall appoint, discharged of all Incumbrances done by them, or by any claiming from, by or under the Deposition; which said Lease is to attend them; and to be left with the Inheritance, and to be left with the Registrar till the 700*l.* is paid, and then to be delivered to the Plaintiffs, and that the Master shall direct and settle the Assignment thereof if the Plaintiffs cannot agree, and that the other Defendants be indemnified.

*Rep. in Chanc. 10, 11.  
See Acc. in Ch. 375.*

## S E C T. V.

Of redeeming Things pawned where they are transferred or delivered over by the Pawnee.

1. **T**Hough the Person that takes the Pawn delivers it over to a Stranger, yet if Pawnee dies, the Tender of the Money must be to his Executor, and not to the Stranger;

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# Redeeming Things pawned.

ger; for the Delivery makes but naked Custody of it: And if the Delivery had been on Consideration, it does not alter the Case; for the Stranger is not privy to the first Contract of pawning, nor to the Condition, and so not like to a Mortgage; and in Case of a Pawn there is only a special Property in the Pawnee, and the general Property continues in the first Owner. *Yelv.* 178. *Tren.* 8 *Jac.* Sir J. Ratcliff v. Davis.

*Demainbray v. Metcalfe & al,*  
*Trin.* 1715. *In Chancery.*

2. The Plaintiff pawned some Jewels to *Knight*, who signed a Writing that they were to be redeemed in twelve Months, otherwise for the 110 *l.* they were to be as bought and sold. *Knight* within a short Time after delivers over the Jewels, together with some Plate of his own, to *Metcalfe*, as a Pledge for 200 *l.* and *Knight* afterwards borrowed 36 *l.* and 50 *l.* of *Metcalfe* on Promissory Notes, to be repaid on Demand. Bill by the Plaintiff to redeem from *Metcalfe*, who by Answer insisted, that although he took Promissory Notes for Repayment

ment of the Sums of 36 *l.* and 50 *l.* upon Demand; yet it was agreed at the same Time that the Pawn should also remain as a Security for these Sums, as well as for the Money before lent; but no Person was then present, therefore he could not prove the Agreement. Lord Chancellor said, it was natural to suppose, that although *Metcalfe* took Promissory Notes, yet his having a Pawn in his Hands of greater Value might be the Inducement to him to lend, and took Time to consider of it. And in *Michaels Term* 1715 said, That although *Metcalfe* was a Bookseller, and did not deal in Plate or Jewels, and so had not gained any Property, as having bought in a Market-Overt; yet it is natural to think, although he took Notes for the 36 *l.* and 50 *l.* that the Pawn was not to be parted with until that Money, as well as what was before lent, was paid; and said, he looked upon it as an Account current between *Knight* and *Metcalfe*, and therefore he might retain what he had in his Hands until Balance paid: And therefore decreed a Redemption to the Plaintiff of his Jewels, upon Payment of all that was due to

**Pawned by one not the Owner.**

*Metcalfe*, as well upon the Notes as on the Pawns; but the Goods of *Knight*, which were pawned, were to be first applied, as far as the Value thereof would extend. 2 *Vern.* 691, 698.

## S E C T. VI.

**Of redeeming Goods in Case they are pawned by one who is not the Owner.**

1. **I**F a Man finds the Goods of another Man, and pledges them for Money, the Owner may retake them. *Br. Pledges*, pl. 28. cites 35 *H. 6. Simon Eyre's Case.*

2. In the Case of *Marsden v. Pansball*, *Mich. 2 Jac.* in Chancery. The Plaintiff (a Clothier in *Yorkshire*) sent Cloths to one *Bumpus* (his Factor in *London*) to sell them for him; but after he received the Cloths from the Plaintiff, pawned them to the Defendant who was a Pawn-Broker in Town. The Plaintiff's Bill was to discover whether these Cloths were pawned to him by *Bumpus*, but did not admit that they were the Plaintiff's Cloths, whereby to enable him to bring an Action at Law. Serjeant *Maynard* moved for the Plaintiff, that the

pawned by one not the Owner.

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the Defendant might be ordered to let the Plaintiff, with two or more Persons present, have a Sight of the Cloths pawned by *Bumpus*, which was ordered accordingly; the Meaning of which was, and so it was taken by the Court, that the Plaintiff should be thereby enabled to bring an Action at Law. 1 *Vern.* 407.

3. And in *An Act for regulating the Trade of Silk-throwing*, 13 & 14 Car. 2. c. 15. it is recited,

§. 6. *That* Whereas there is a Necessity lying upon the Silk-throwers to deliver to their Winders or Doublers considerable Quantities of Silk, which being of a good Value, is by evil disposed Persons many Times unjustly, deceitfully and falsly purloined, imbezilled, pawned, sold and detained, to the great Damage, and sometimes the utter undoing of the Thrower who employs the said Persons. (2.) *And enacted*, That every such Silk-winder and Doubler, who shall at any Time hereafter unjustly or deceitfully and falsly purloin, imbezzle, pawn, sell or detain any Part of Silk-winders delivered, or to be delivered by any Silk-thrower or other Person, to them or any of them to wind or double, That

The Punishment of Silk-winders that imbezil Goods delivered to them in them.



# **Pawned by one not the Owner.**

in every such Case and Cases, as well the Winder or Journeyman so offending, as the Buyer and Buyers, Receiver and Receivers of such Silk, being thereof lawfully convicted by Confession of the Party or Parties so offending, or by any Witnesses upon Oath before one or more of the Justices of Peace of the County or Liberty where the same Offence or Offences shall be committed; or if it be within any City or Town Corporate, before the Mayor, Bailiff or chief Officer of the said City or Town Corporate, who by Force of this Act are empowered and authorized to minister the same Oath, and finally to hear and determine all and every the Offences aforesaid, and to give and make to the Party and Parties grieved such Recompence and Satisfaction for such their Damage and Loss, and Charges thereabout, as by the said Justice or Justices, or Chief Officers shall be ordered and appointed.

4. §. 7. Provided, That no more Damage be given or awarded than the Party grieved shall prove he is damaged, and hath expended in looking after the same; and if the Party or Parties so offending shall not be able  
or



pawned by one not the Owner.

or sufficient to make Recompence or Satisfaction for the said Offence, nor do make Recompence or Satisfaction for the same Offence or Offences within fourteen Days next after such Conviction in such Manner and Form, as by the Justice or Justices, or Chief Officers shall be ordered and appointed, as aforesaid, then the Party or Parties so offending, for the first Offence shall be apprehended and whipped, or set in the Stocks in the Place where the Offence is committed, or in some Market-Town in the said County near unto the Place where the Offence or Offences aforesaid shall be committed, as shall be limited and appointed by the said Justice or Justices of the Peace, or Chief Officers; and for the second Offence to incur the like, or such further Punishment, by Whipping or being put in the Stocks, as the said Justice or Justices of Peace, or Chief Officers shall in their Discretion think fit and convenient.

§. 8. And it is likewise enacted, Persons That all and every Receiver and Receiver such im-  
ceivers, Buyer and Buyers of any Silk, bezilled  
or such as take to pawn any Silk im-Goods  
how to be punished.  
bezilled

# **Pawned by one not the Owner,**

bezilled or purloined, contrary to the true Meaning of this Act, (Matter of Fact being proved) shall make Satisfaction within the Time aforesaid, or else shall be subject to like Punishment as by the Act is inflicted, or provided to be inflicted upon such Person so imbezilling or purloining any such Silk as aforesaid.

6. And by another Act to regulate the Trade of Silk-throwing, made 20 Car. 2. c. 6.

Silk-winders or Doublers offending to be committed to Prison.

§. 3. It is enacted, That if any Silk-winder or Doubler shall hereafter be found faulty in unjustly, deceitfully or falsely purloining, imbezilling, pawn-ing, selling or detaining any Silk committed to his or their Trust, That then any Justice of Peace, Mayor, Bailiff, or Chief Officer of any County, Liberty or Corporation, shall immediately upon Conviction by Confession of the Party, or upon the Oath of one Witness before any of the said Justice or Justices of the Peace, or other Officer, commit to Prison or to the House of Correction the Offender, till Satisfaction be given to the Party wronged, or Punishment inflicted, as by an Act of Parliament, intituled, An Act for

re-

regulating the Trade of Silk-throw-<sup>14 Car. 2.</sup>  
ing, made this present Parliament, c. 15. s. 6.  
is directed and appointed; any Thing  
in the said Act contained to the con-  
trary hereof in any wise notwith-  
standing.

7. And by *An Act for the further  
Encouragement of the Manufacture of  
Lustrings and Alamodes within this  
Realm, and for the better preventing  
the Importation of the same*, made 8  
89 W. 3. c. 36. it is recited,

§. 6. *That* Whereas the Silk Ma- Persons  
ufacturers are obliged from Time to imbezil-  
Time to deliver to their Agents, Jour- ing, &c.  
ney-men, Warpers and Winders, great any Silk  
Quantities of Silk to work up, which to be  
is often by them imbezilled, sold or wrought  
pawned, to the great Detriment of up, and  
the Silk Manufacturers of this King- also Buy-  
dom, and enacted, That all and every ceivers,  
Person or Persons whatsoever that &c. to be  
shall imbezil, pawn, sell or detain any liable to  
of the Silk so delivered, or after the the Penal-  
same is wrought up, and also all and Act 13 &  
every Receiver and Receivers, Buy- 14 Car. 2.  
er and Buyers, or such as take to 15  
pawn any of the said Goods, shall and 20  
be subject and liable to all the Penal- Car. 2.  
ties, Forfeitures and Punishments c. 6.  
contained, mentioned and provided  
in

**Pawned by one not the Owner**

in one Act of Parliament made in the thirteenth and fourteenth Year of the Reign of *Charles* the Second intitled, An Act for regulating the Trade of Silk-throwing; and in another Act made in the twentieth Year of the said King *Charles* the Second, intitled, An Act to regulate the Trade of Silk-throwing.

8. And by *An Act for preventing Journeymen Shoemakers selling, exchanging or pawning Boots, Shoes, Slippers, Cut Leather, or other Materials for making Boots, Shoes or Slippers, and for better regulating the said Journeymen*, made 9 Geo. I. c. 27. it is recited,

*§. 1. That Whereas great Frauds and Abuses are frequently practised by Journeymen Shoemakers, and others employed as such in the Art or Mystery of Cordwainers, and their Accomplices, in purloining, imbezzling, selling, pawning, or exchanging for worse the good Leather, and other Materials, delivered to or intrusted with them for making Boots, Shoes, Slippers, and other Wares, and it is necessary to make further Provision for discovering and punishing such Offences, and for better regulating*

pawned by one not the Owner.

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gulating the said Journeymen ; and  
enacted, That if any Journeyman  
Shoemaker, or other Person hired or  
employed as such, within the Bills Proof of  
of Mortality, shall, after the 24th Journey-  
Day of *June* in the Year of our man's pur-  
Lord 1723, be accused by the Master joining  
so hiring or employing such Journey- a Justice  
man, or other Person aforesaid, of may con-  
having, after the said 24th Day of visit him,  
*June* 1723, fraudulently purloined,  
imbeziled, sold, pawned or exchanged  
any Boots, Shoes, Slippers, Cut Lea-  
ther, Lace, Silk, Lasts, or other Ma-  
terials for making Boots, Shoes, Slip-  
pers, or other Wares, not being the  
proper Goods of the Person so accused,  
it shall and may be lawful to and for  
any one or more of his Majesty's Ju-  
stices of the Peace for the County, Ci-  
ty, Town or Place where such Of-  
fence shall be committed, or where  
the Party so accused shall reside or in-  
habit, and such Justice or Justices is  
and are hereby respectively authorized  
and required, upon Complaint, or In-  
formation upon Oath of such Offence  
(which Oath or Oaths such Justice  
or Justices is and are hereby impow-  
ered to administer) to summon the  
Party or Parties complained of, or  
to



**Damned by one not the Owner,**

to issue his or their Warrant or Warrants, to apprehend and bring before him or them the Person or Persons so accused, complained of or suspected, and upon his or their Appearance, or Default to appear, to proceed to examine the Matter of Fact with which they are charged, and upon due Proof thereof made, either by Confession of the Party or Parties so accused, or upon the Oath or Oaths of one or more credible Person or Persons to determine the same, and to convict the Offender or Offenders, and upon such Conviction immediately to award to the Party or Parties injured reasonable Recompence and Satisfaction for the Damage, Loss and Charges by them sustained, and upon the neglecting or refusing immediately to pay the same, to levy the same by Warrant or Warrants under the Hand and Seal or Hands and Seals of such Justice or Justices, upon the Goods and Chattels of the Offender or Offenders, rendering the Overplus to the Owner or Owners thereof, and for want of sufficient Distress to cause the Offender or Offenders to be whipped in the Parish or Place where the Offence shall be committed, and

And may award Satisfaction for Damage sustained,

which may be levied by Distress.

punished by one not the Dweller.

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in Case of Conviction for any second or other such Offence, to commit the Offender or Offenders to the House of Correction, there to remain and be kept to hard Labour for any Time not exceeding one Month, nor less than fourteen Days, as to such Justice or Justices shall seem meet and reasonable.

9. §. 2. And for more effectual deterring and punishing Accomplices and Confederates in the said Frauds and Abuses, it is enacted, That all and every Person and Persons, who shall from and after the said 24th Day of *June* 1723, buy or receive, or take in Pawn, of or from any Journeyman Shoemaker, or other Person hired or employed as such, in Manner as aforesaid, or from any other Person whatsoever, any Boots, Shoes, Slippers, Cut Leather, Lace, Confederate Silks, Lasts, or other Materials for making Boots, Shoes, Slippers, or other Wares, not being the proper Goods of the Person or Persons selling or pawning, or offering to sell or pawn the same, shall for every such Offence (being lawfully convicted thereof in Manner as aforesaid) make such reasonable Re-  
com-

compence within two Days after the Matter of Fact shall be determined, as upon hearing of the same shall be awarded, in Manner as aforesaid, or else be subject to such Distress, and for want of sufficient Distress, to be liable to the like Punishment as is hereby inflicted on intended to be inflicted on such Journeyman, Journeyman, or other Person or Persons so purloining, imbeziling, selling, pawning or exchanging such Goods or Materials as aforesaid.

Justices may issue Warrants, &c. to search for Leather, &c. purloined.

10. §. 3. And for the more effectual discovering where any such Leather, or other Materials as aforesaid, which from and after the said 24th Day of *June* 1723, shall be fraudulently sold, exchanged or pawned; it is enacted, that it shall and may be lawful for any two or more of his Majesty's Justices of the Peace dwelling within the Limits aforesaid, upon any Complaint or Information upon Oath, to issue their Warrant or Warrants for searching in the Day-time the House, Warehouse, or other Place of such Person or Persons, as such Justices shall have just Cause to suspect to have received, bought, or taken to pawn, any such Goods

purloined as aforesaid, and for that  
 Purpose, upon Refusal, to break open  
 any such House, Warehouse, or other  
 Place, if there shall be Occasion; and  
 that every Person who shall oppose  
 and hinder such Search, shall for  
 every such Offence forfeit the Sum of  
 ten Pounds to any Person or Persons  
 who shall inform and sue for the same,  
 within two Calendar Months after  
 the Offence committed, in any of  
 his Majesty's Courts of Record at  
*Westminster*, by Action of Debt, Bill,  
 Plaint or Information, wherein no  
 Effoin, Privilege, Protection, Order  
 of Restraint, Wager of Law, or  
 more than one Imparlance shall be  
 granted and allowed; and if it shall  
 appear by the Oath of one or more  
 credible Witnesses or Witneses, or up-  
 on Search of such House, Ware-  
 house or other Place, it shall be found  
 such Person or Persons hath or have  
 in his or their Custody or Possession  
 any such Goods so fraudulently sold,  
 exchanged or pawned as aforesaid,  
 such Justices shall cause the same to And may  
 be restored to the Owner or Owners, cause  
 Proprietor or Proprietors thereof, and <sup>pawned</sup> Goods to  
 oblige the Party or Parties so offend- <sup>be restored</sup>  
 ing to Owners.

Patoned by one not the Owner

ing to make Recompence and Satisfaction to such Owner for the Loss and Damage in detaining such Goods and Charges in getting the same, and upon Refusal of the Party or Parties so to do, to be subject to the like Punishment as shall be inflicted or hereby provided to be inflicted on such Journeyman or Agent, or other Person so fraudulently imbeziling, purloining, selling, exchanging or pawning any such Goods as aforesaid.

II. §. 4. And for the better regulating the said Journeymen Shoemakers it is further enacted, That all and every Person and Persons, who shall at any Time hereafter be retained or employed in the making up of any Boots, Shoes and Slippers, or other Wares for any one Master, and shall neglect the Performance thereof, by suffering himself to be retained or employed by any other Master, or other Person before whatsoever, before he or the Work shall have compleated the same, and finished the said Work first delivered to him or them, then and in every done, shall such Case every Person so offending be sent to the House of Correction. the Oath or Oaths of one or more



pawned by one not the Owner.

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credible Witness or Witnesses, before one or more Justice or Justices of the Peace where the Offences shall be committed, the Person or Persons so convicted shall be sent to the House of Correction, there to be kept to hard Labour for any Time not exceeding one Month.

12. §. 5. Provided always, That Persons it shall and may be lawful for any aggrieved Person aggrieved, by any Order or may appeal to be made by any such Justice or Justices, to appeal to the next

Quarter-Sessions of the Peace to be holden for the County, City, Town or Place where such Order shall be made, giving eight Days Notice of such Appeal, and such Justices at their Quarter-Sessions shall hear the Matter, and shall have Power to make Satisfaction to either Party as to them shall seem just, whose Determination therein shall be final.

SECT.

## S E C T. VII.

Of Things pawned, being lost,  
stolen or damaged.

1. IF a Pawn be of a perishable Nature, as Oil, Corn, &c. and no Time of Redemption limited, the Loss will be to the Pawnor, if the Goods perish naturally, and the Pawnee will have *Debt* for his Money, and the other no Remedy for his Pawn. *Per Fleming Ch. J.* and not denied in the Case of *Ratcliffe v. Davis, Telv. 179.*

2. But if a Man takes *Bona fide*, as a Pawn, at his own Peril be it, if he cannot re-deliver them again on Tender and Payment of the Money borrowed. 1 *Bullst.* 30.

3. If a Creditor takes a Pawn, he is bound to restore it upon Payment of the Debt; but if his Care in keeping it be exact, and the Pawn is lost, he shall be excused, for there is no Default in him. 2 *Salk.* 523.

4. And in Case the Pawn be lost, the Pawnee has still his Remedy for the Money against the Pawnor; for the Law requires nothing extraordinary

nary of the Pawnee, but only that he shall use an ordinary Care for restoring the Goods. *Ibid.*

5. If a Pawnee is robbed in wearing Things pawned, he is answerable; but if a Pawn is laid up, and the Pawnee is robbed before Tender of the Money, he is not answerable, unless there be a Default in him: If after Tender the Pawnee keeps the Goods and they are stolen, the Pawnee must answer, for now his Property is determined, and he is a wrongful Detainer; and he that keeps Goods by Wrong must answer for them at his Peril in all Events; for his Detainer is the Reason of the Loss. *Per Holt in Ceggs and Bernard, Trin. 2 Ann. B.R. 2 Salk. 83 b. 523.*

# S E C T. VIII.

Of Actions, Prosecutions, and Pleadings relating to Pawns.

1. Information was made in the Exchequer by *J. B.* that the King was possessed of a Jewel at *W.* and shewed what, which was in the keeping of *N. P.* Warden of the Jewels of

of the King, such a Day and Year; and that after such a Day and Year in *London* it came to the Hands of *S. E.* and Proceſs iſſued againſt him, who came and ſaid that the City of *London* is an antient City, and has been Time out of Mind, in which there has been a Cuſtom Time out of Mind, that if any put Goods in Pledge for any Duty whatſoever, that he who receives it ſhall retain it till he be ſatiſfied of the Debt, by which, &c. and that *O. R.* was poſſeſſed, and the Day and Year in the Information delivered the Goods in Pledge to the Defendant for 60*l.* borrowed of him; *abſque hoc*, that the Jewel came to his Hands in any other Manner, and ſaid that the Sum is not yet paid, & *hoc*, &c. and ſaid by Proteſtation, that the Property was not in the King, nor was it ſigned with the Print or Arms of the King; and the King demurred in Judgment; and upon long Argument it was held by the beſt Opinion, that the Cuſtom is not good; for it cannot have lawful Commencement; and if it was good between Subjects, yet it ſhall not bind the King; and after it was agreed in the Exchequer that the

King

King shall be restored, and Process by *Capias* awarded against the Defendant. *Br. Customs, pl. 5. cites 35 H. 6. 25.*

2. In Debt the Defendant said that he has infeoffed him of certain Lands in Pledge, and if he will re-infeoff he is ready, and always has been, to pay him; and the best Opinion was, that it was a good Plea; but several were of Opinion, that where Contract is simple at the Commencement, and after Pledge is given for the Debt, that it shall not be pleaded in Debt, that the Plaintiff has pledged, &c. *contra* where Pledge is delivered for the Debt at the making of the Contract. For in the other Case, the one shall have Debt, and the other Detinue of the Goods; *Contra*, where it is given in Pledge at the Making of the Contract. *Br. Dette* 111. cites 9 E. 4. 25.

3. Debt for 200*l.* and counted that the Defendant delivered Silks to him to sell, *Melior modo quo poterit* at his Pleasure, and so much as he might receive for the Silks to retain for the 200*l.* in Satisfaction, &c. and so much as should remain the Defendant should pay to him; and that he sold



for 150 *l.* and for 50 *l.* which remained he brought his Action. *Pigot* said, *A. B.* offered you 200 *l.* for the Silks, and you refused; and yet, *per Cat.* and *Brian* this is no Plea; for the Plaintiff had Authority to sell them at his Pleasure, and if he had sold them for 12 *d.* tho' they were worth 1000 *l.* the Defendant has no Remedy; but *Brooke* says, it seems to him that this is not Reason; for he was to sell them *Melioris modo quo poterit*, which is, for the best Price. *Br. Dette, pl. 164.* cites 18 *E. 4. 5.*

4. Trespass by *A.* against *B.* of a Chain of Gold taken; the Defendant said that the Plaintiff before the taking licensed him to take the Chain, and retain it in Pledge till 100 Marks which he owed to him were paid, by which Licence he took it; Judgment, *Éc.* *Keble* demurred for three Causes, 1. Because he pleaded Licence; and it appeared by his own Plea that he took it as a Pledge, by which he ought to say, that he took it as a Pledge, and that the Plaintiff *impignoravit, Éc.* and not *quod licentiavit*. But to this it was said, that he cannot take it as a Pledge, because he had not Possession thereof before, but

but that he may take it and retain it *quousque*, &c. *Per Brian*, Ch. J. A Pledge cannot be but where the Thing is delivered by Command of the other to take it, and at the same Time; and this is properly a Pledge: But if a Man commands another to take and retain it till he be satisfied of such a Debt, this is no Pledge; and this Diversity was granted *per Cur.* And so it seems the Plea held good as to this. *Keble* insisted 2dly, Because it is not alledged for what Cause the Debt was due; and *per Townsend* and *Davers* Justices the Debt is not transferable. And 3dly, Because the Defendant did not say that the 100 Marks were not paid at the Time when he took the Chain, and as to this the Defendant amended his Plea, &c. *Et adjournatur.* *Br. Trespass*, pl. 271. cites 5 H. 7. 1. *Lord Dudley v. Lord Powis.*

5. In Trespass of Goods taken, the Defendant pleaded how he by Accord of the Plaintiff detained them in Pledge for 10 l. which the Plaintiff owed him, and did not shew Cause of the Debt, and well. *Br. Pledges*, pl. 13. cites 21 H. 7. 13. *Vide Stat. 1 Jac. 1. c. 21. ante.*

*The King v. Gallwick, Pasch.  
5 W. & M. B. R.*

Indict-  
ment in  
Nature of  
an Action  
of Trover  
against a  
Pawn-  
Broker.

6. The Defendant was indicted in *Middlesex* for being a Pawn-Broker; and it was moved to quash it, for that this Indictment was in Nature of an Action of Trover; for it was, that the Defendant on such a Day, &c. had lent *Mary* the Wife of *T. S.* 2 s. 6 d. and at the same Time did receive of her an upper Petticoat of Silk as a Pawn for the Re-payment of the Money, and that he (the Defendant) had *illicite & deceptive* refused to deliver the said Petticoat, notwithstanding that the said *Mary* had rendered to him the said 2 s. 6 d. with Interest for the same, *ad damnum* of the said *T. S.* and *in malum exemplum*, &c. so that at most this is only a Breach of Contract, which is actionable, but not indictable. But the Court would not quash the Indictment, (*absente Holt Chief Justice*) because of the Abuse by Pawn-Brokers. *Sed quære*; for if the Defendant had demurred to this Indictment it could not have been maintained by Law. *Carth. 277.*

*Trin.*

*Trin. 4 Fac. 2. in Banco Regis*  
1688. *Rex versus Grimes and*  
*Thompson.*

7. The Defendants were indicted Two are for being common Pawn-Brokers, indicted and that *Grimes* had unlawfully ob- for a Con- federacy, tained Goods of the Countess of, one is ac- &c. and that he, together with one quitted, *Thompson, per Conſederationem* & *Aſſu-* and that is the Ac- tiam, did detain the ſaid Goods un- quittal of til the Countess had paid him twelve the other. Guineas.

8. *Thompson* was acquitted and *Grimes* was found guilty, which must be of the first Part of the Indict- ment only; for it could not be *per Conſederationem* with *Thompson*, and therefore it was moved in Arrest of Judgment, that to obtain Goods un- lawfully was only a private Injury, for which the Party ought not to be indicted. To which it was answered, that a plain Fraud was laid in this Indictment, which was sufficient to maintain it; and that tho' one was acquitted, yet the Jury had found the other guilty of the whole: But the Court were of Opinion, that the Acquittal of one is the Acquittal of

D 4 both

both upon this Indictment; and therefore it was quashed. 3 *Mod.* 220.

Pawn-Broker.

9. If a Pawn-Broker refuses, upon Tender of the Money, to deliver the Goods pledged, he may be indicted; for being secretly pawned, it may be impossible to prove a Delivery in Trover for want of Witness. *Per Holt C. J.* and *Eyre J. Anonymus, Pasch. 5 W. & M. B. R. 2 Salk. 522.*

*Jones versus Hart, Mich. 10 Will. 3. Coram Holt C. J. at Nisi Prius at Guildhall.*

10. A Pawn-Broker's Servant took a Pawn; the Pawnor came and tendered the Money to the Servant; he said he had lost the Goods: Upon this the Pawnor brought Trover against the Master, and it was held well, *per Holt C. J.* The Servants of *A.* with his Cart run against another Cart, wherein was a Pipe of Sack, and overturned the Cart and spoiled the Sack; an Action lies against *A.* So where a Carter's Servant run his Cart over a Boy; 'twas held the Boy should have his Action against the Master for the Damage <sup>he</sup>



he sustained by this Negligence. So in *Lane* and *Cotten*, a Letter with Bills in it was delivered at the Post-Office to a Servant, 'twas held, unless he stole them, for then he was a Wrong-doer, as where a Gaoler suffers an Escape wilfully; otherwise if negligently. *Per Holt C. J. 2 Salk. 441.*

## S E C T. IX.

Usury what, and the Statutes relating thereto.

**U**SURY is a Gain of any Thing above the Principal, or that which was lent, and is taken only in Consideration of the Loan, whether it be of Money or any other Thing. *2 Lill. Reg. 671.* But in a legal Sense it is a Gain over and above the principal and legal Interest.

2. By the Stat. *37 H. 8. c. 9. sect. 1.* All Statutes heretofore made concerning Usury shall be void.

3. *Sect. 2.* No Person shall sell his Merchandize to any Person within three Months after bying the same, or any Part thereof, upon a lesser Price, knowing them to be the same.

D 5

4. *Sect.*

## Statutes concerning Usury.

4. *Sec.* 3. No Person by way of any corrupt Bargain, Loan, Exchange, Chevifance, Shift or Interest of any Wares or other Things, or by any other deceitful Way, shall take in Gains for the forbearing one Year for his Money, or other Thing that be due for the same Wares or other Things, above 10 *l.* in the Hundred.

5. *Sec.* 4. If any Person do sell or lay to Mortgage any Lands or Hereditaments, upon Condition of Payment or Non-payment of Money at or before any Day, the Person to whom such Lands shall be sold or laid to Mortgage, shall not have in Gain above 10 *l.* in the Hundred for one Year.

6. *Sec.* 5. If any Person shall do any Thing contrary to this Statute, he shall forfeit the treble Value of the Wares and other Things sold, and the treble Value of the Profits of the Lands taken by Mortgage, and also shall suffer Imprisonment, and make Fine and Ransom at the King's Will; the Moiety of which Forfeiture of the treble Value shall be to the King, and the other Moiety to

## Statutes concerning Usury.

to him that will sue for the same in any the King's Courts of Record.

7. *Stat. 6.* This Act shall not extend to any lawful Obligation indorsed with a Condition, nor to any Statute or Recognizance made for the Payment of a lesser Sum, so that the same may be made for a true Debt or for the Performance of true Covenants upon a just Intent, other than in Cases of Usury, Interest, corrupt Bargains, Shift or Chevifance, nor shall extend to any Recovery, Fine, Feoffment, Release, Confirmation or Grant, made upon Condition with a true Intent, other than to such as shall be made upon Condition extending to Usury. Revived by 13 *Eliz. c. 8.*

8. Stat. 13 *Eliz. c. 8. Sect. 3.* All Bonds and Assurances for Payment of Money lent, or covenant to be performed, upon any Usury in any Thing against the Act 37 *Hen. 8. c. 9.* upon which there shall be taken above the Rate of 10*l.* for the Hundred for one Year, shall be void.

9. *Sect. 4.* All Brokers and Solicitors of Contracts against the said Statutes shall be punished as Counsellors,

## Statutes concerning Usury.

fellors, Attornies or Advocates, in any Case of *Premunire*.

10. *Señ.* 5. All Usury, Loan, &c. mentioned in the said Statute, whereupon is not reserved above 10*l.* for 100*l.* shall be punished in Form following, *viz.* such Offender shall forfeit so much as shall be reserved by way of Usury above the Principal, to be recovered as by the said Statute.

11. *Señ.* 6. Justices of Oyer and Terminer, and Justices of Assise, Justices of Peace in their Sessions, Mayors, Sheriffs, Bailiffs of Cities, shall have Power to inquire, hear and determine, of all Offences against the said Statute.

12. *Señ.* 8. This Statute shall not extend unto any Allowances for the finding of Orphans according to the Customs of the City of *London*, or any other City.

13. *Señ.* 9. If any Person offend contrary to the said Statute, such Offender may also be punished according to the Ecclesiastical Laws; and all offending in Usury, Shifts or Chevifance against this Act, and not taking, but only after the Rate of  
ten

ten in the Hundred for a Year, shall be only punished by the Forfeitures appointed by this Act against such as shall not receive above ten in the Hundred. Made perpetual by 39 Eliz. c. 18.

14. Stat. 21 Jac. 1. c. 17. *sect. 2.* No Person shall take for Loan of Monies, &c. above eight for a Hundred for one Year,

15. *Sect. 3.* Every Scrivener, Broker or Solicitor, who shall take for procuring the Loan of Money above 5*s.* for 100*l.* for a Year, or above 12*d.* for making or renewing the Bond, &c. shall forfeit 20*l.* and have Imprisonment Half a Year; the one Moiety of which Forfeitures to be to the King, and the other Moiety to him that will sue for the same in the County where the Offences are committed.

16. *Sect. 5.* This Law shall not be construed to allow the Practice of Usury in Point of Religion or Conscience. Made perpetual by 3 Car. 1. c. 4.

17. Stat. 12 Car. 2. c. 13. *sect. 2.* No Person shall take for Loan of Monies



## Statutes concerning Usury.

Monies, &c. above 6 *l.* for the Forbearance of 100 *l.* for a Year, &c.

18. *An Act to reduce the Rate of Interest without any Prejudice to Parliamentary Securities*, 12 Ann. Stat. 2. c. 16.

Whereas the reducing of Interest to ten, and from thence to eight, and thence to six in the Hundred, hath from Time to Time by Experience been found very beneficial to the Advancement of Trade and Improvement of Lands; And whereas the heavy Burden of the late long and expensive War hath been chiefly born by the Owners of the Land of this Kingdom, by Reason whereof they have been necessitated to contract very large Debts, and thereby, and by the Abatement in the Value of their Lands, are become greatly impoverished; And whereas by Reason of the great Interest and Profit which has been made of Money at home, the foreign Trade of this Nation hath of late Years been much neglected, and at this Time there is a great Abatement in the Value of the Merchandizes, Wares and Commodities

modities of this Kingdom, both at home and in foreign Parts, whither they are transported; And whereas for the Redress of these Mischiefs, and the preventing the Increase of the same, it is absolutely necessary to reduce the high Rate of Interest of six Pounds in the hundred Pounds for a Year to the nearer Proportion with the Interest allowed for Money in foreign States; Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by the Authority of the same, That no Person or Persons whatsoever, from and after the 29th Day of *September* in the Year of our Lord 1714, upon any Contract which shall be made from and after the said 29th Day of *September*, take directly or indirectly, for Loan of any Monies, Wares, Merchandize or other Commodities whatsoever, above the Value of five Pounds for the Forbearance of one hundred Pounds for a Year, and so after that Rate for a greater or lesser Sum, or for a longer or

# Statutes concerning Usury.

or shorter Time; and that all Bonds, Contracts and Assurances whatsoever made after the Time aforesaid for Payment of any Principal, or Money to be lent or covenanted to be performed upon or for any Usury, whereupon or whereby there shall be received or taken above the Rate of five Pounds in the Hundred, as aforesaid, shall be utterly void; and that all and every Person or Persons whatsoever which shall after the Time aforesaid, upon any Contract to be made after the said 29th Day of September, take, accept and receive, by Way or Means of any corrupt Bargain, Loan, Exchange, Chevezance, Shift, or Interest of any Wares, Merchandize, or other Thing or Things whatsoever, or by any deceitful Way or Means, or by any Covin, Engine or deceitful Conveyance, for the forbearing or giving Day of Payment for one whole Year, of and for their Money or other Thing above the Sum of five Pounds for the forbearing of one hundred Pounds for a Year, and so after that Rate for a greater or lesser Sum, or for a longer or shorter Term, shall

forfeit and lose for every such Offence the treble Value of the Monies, Wares and Merchandizes, and other Things so lent, bargained, exchanged or shifted.

19. And be it further enacted by the Authority aforesaid, That all and every Scrivener and Scriveners, Broker and Brokers, Solicitor and Solicitors, Driver and Drivers of Bargains for Contracts, who shall after the said 29th Day of *September* take, or receive, directly or indirectly, any Sum or Sums of Money, or other Reward or Thing for Brokerage, soliciting, driving or procuring the Loan, or forbearing of any Sum or Sums of Money over and above the Rate or Value of five Shillings for the Loan, or forbearing of one hundred Pounds for a Year, and so ratably, or above twelve Pence, over and above the Stamp-Duties, for making or renewing of the Bond or Bill of Loan, or forbearing thereof, or for any Counterbond or Bill concerning the same, shall forfeit for every such Offence 20*l.* with Costs of Suit, and suffer Imprisonment for Half a Year; the one Moiety of all

## Statutes concerning Usury.

all which Forfeitures to be to the Queen's most Excellent Majesty, her Heirs and Successors, and the other Moiety to him or them that will sue for the same in the same County where the several Offences are committed, and not elsewhere, by Action of Debt, Bill, Plaint or Information, in which no Effoin, Wager of Law or Protection shall be allowed.

20. But by Stat. 3 G. I. c. 8. *sect.* 39. the Bank may borrow Money on Contracts, &c. under their Common Seal, or upon Credit of their Capital Stock, at such Interest as they shall think fit, tho' it exceed the Interest allowed by Law, and give such Security as shall be to the Satisfaction of the Lenders.

21. And by Stat. 3 G. I. c. 9. *sect.* 16. the *South-Sea* Company may borrow Money upon Bills, &c. under their Common Seal, or on Credit of their Capital Stock, for such Interest for any Time not less than six Months, as they shall think fit.

22. And by Stat. 6 G. I. c. 18. *sect.* 12. Persons in Partnership (other than the two Assurance Corporations) lending Money by Way of Bottom-ry,



ry, the Security to be void, and the Agreement to be adjudged an usurious Contract, and the Offenders to suffer as in Cases of Usury.

## S E C T. X.

## What Courts have Jurisdiction in Matters of Usury.

1. **T**HE King. against *Bakeshaw*,  
Pas. 8 W. 3. The Defendant was indicted at the *Old Baily* for Usury, and being convicted he brought a Writ of Error, and the Judgment was reversed because the Court of Sessions had no Jurisdiction in this Matter. 3 *Salk.* 188.

2. *Gardener v. Morefield*, Trin. 15 Car. 2. B. R. Pemberton assigned Error in an Action *tam quam* on the Statute of Usury, that it was brought in the Court of *Fly* which lies not there, as in *Gregory's Case* 6 Co. 19. b. and *Barrington* against *Kine*, 1 Cro. bat only in the Courts of *Westminster. Adjournatur*. And in *Michaelmas Term* following the Court seemed of that Opinion ; but the Judgment

## Cases concerning Usury.

ment being *Misericordia for Capiatur*, it was reversed *per Cur.* 1 Keb. 554, 632.

3. Indictment was at the Sessions before the Justices of the Peace at Hicks's Hall for Usury, *contra formam Statuti*, and Judgment was against the Defendant, upon which a Writ of Error was brought in B. R. and the Judgment reversed; for the Justices of Peace have no Jurisdiction in this Case. *The King* against Smith, *Passch.* 4 Ann. B. R. Salk. 680.

4. A Writ of Error of a Judgment at the Sessions for *Middlesex* at Hicks's Hall, upon an Indictment upon the Statute of Usury; and Mr. Eyre assigned for Error, that the Justices at Sessions had no Jurisdiction of Usury by the Statute. And upon looking into the Statute the Court were of that Opinion, and reversed the Judgment.

5. See for the Reason of this and the like Cases, the Case *Rex v. Alsop*, 4 Mod. 49. an Indictment for shooting with a Hand-Gun and Hail-Shot, found at the Sessions, and held not to lie; and *Rex v. Bugg*, an Indictment found also at the Sessions, for that

that the Defendant being a Cloth-  
worker, and not living in the City,  
Borough or Town Corporate, did  
yet keep in his House more than one  
Woollen Loom. *The King* against  
*Smith*, 4 *Mod.* 379. *East. Ter.* 4 *Ann.*  
2 *Lord Raym.* 1144.

## S E C T. XI.

When an Usurious Bond is void.

1. IN the Case between *Body* and  
*Tassell* it was holden by Baron  
*Clarke*, That if a Man lends Money,  
and for the Forbearance of it con-  
tracts for more than 10*l.* *per Cent.*  
That the Bond made for it is void  
presently; and that if he does receive  
excessive Interest, that he shall for-  
feit treble the Value. *Trin.* 30 *Eliz.*  
*in Scac.* 3 *Leon.* 105.

2. In Debt on an Obligation upon  
Oyer, the Condition was to pay by  
a certain Day; the Defendant plead-  
ed the Stat. 12 *Car.* 2. *c.* 13. and said  
that the Contract was usurious; but  
*per Cur.* being made after the Bond  
forfeited to receive Interest accord-  
ing

ing to the Penalty which was double the Principal, it does not void the Obligation that was good at first, but only subjects the Taker to other Penalties, and Judgment for the Plaintiff *nisi*. *Radley and Manning, Pas. 25 Car. 2. B. R. 1 Keb. 142.*

## S E C T. XII.

## Of paying Boney before due.

**I**N Debt upon an Obligation where the Statute of Usury was pleaded, it was said by *Popham*, If a Man lends 100*l.* for a Year, and to have 10*l.* for the Use of it; if the Obligor pays the 10*l.* twenty Days before it be due, that does not make the Obligation void, because it was not corrupt: But if upon making the Obligation, it had been agreed that the 10*l.* should have been paid within the Time, that should have been Usury, because he had not the 100*l.* for the whole Year; when the 10*l.* was to be paid within the Year. And Verdict was given accordingly. *Trin. 42 Eliz. Noy 171.*

## S E C T. XIII.

When a Receipt of more than legal Interest is within the Statute, when no corrupt Agreement is made.

1. **A**N Information upon 12 Car. 2. c. 13. for taking excessive Usury. The Information is, That the Defendant 16 Nov. 20 Car. 2. did lend to J. S. 20*l.* till June then next following, and that afterwards, viz. *ad finem Terminæ prædictæ*, which was 6 June following, he took of the said J. S. *corrupte & extorsive* for the Loan aforesaid 30*s.* which was above the Rate by the said Statute allowed. Upon Not guilty pleaded, a Verdict was found against the Defendant; and Keeling moved for him in Arrest of Judgment, because the corrupt Agreement ought to be within the Statute at the making of the Contract, and not at the End of the Term as 'tis laid in the Information; which the Court agreed when the Action is grounded on the Loan, but being



## Cases concerning Usury.

being on the Receipt, the corrupt Receipt is sufficient, but not unless Money be continued, or Refusal to deliver up the Obligation without *Adjournatur*; the Verdict being against Evidence. *Rex v. Allen*, *Raym.* 196. 2 *Keb.* 690.

2. In *Ballard v. Oddey* it was ruled, that to avoid a Security by Reason of Usury the Contract itself must be usurious; for if the Party takes afterwards more than is allowed, that will not make it so; so that if the Agreement of the Parties be honest, but made otherwise by the Mistake of the Scrivener, yet 'tis not Usury; as if a Mortgage be for 100*l.* with a Proviso to be void on Payment of 106*l.* at the End of one Year, and no Covenant for the Mortgagor to take the Profits till Default be made in Payment, so that in Strictness the Mortgagee is intitled both to the Interest and Profits; yet if this was not expressed, the Agreement is not Usury. 2 *Mod.* 307.

3. In Information on the Statute of Usury, *Jones* excepted in an Arrest of Judgment, because an Agreement *corruptè* to take Use for the

Time past is not within the Statute, which is for giving Day or Forbearance, which cannot be, the Time being past. *Tewissen* and *Windham*, the Statute is not for the Forbearance, which may as well refer to Time past as future: Also by *Hyde*, it being said *corrupte agreatum*, the dating of the Bond will not avoid it, especially the Information being grounded on the Receipt, not on the Contract. But by *Jones* this makes void the Security, the other hath only Penalty annexed; also the Usurer hath no Means to compel the Payment of any Use. *Adjournatur. The King v. Rant, Trin. 16 Car. 2. B. R. 1 Keb.*

744.

4. In an Information on 12 Car. 2. c. 13. for receiving *corrupte per viam accommodationis* forty-two Shillings of one *Hardy* for the Forbearance of 25*l.* from the 29th of *July* to the 30th of *May*, which *per Saunders* was excepted in Arrest of Judgment; here appears no Bargain to be made, but that the Payment was voluntary, being after the Forbearance; so there was no Usury given for any Day of Payment to come: And by *Jones*, no doubt but on Agreement

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at *Michaelmas* to forbear till *Christmas*, if he would give above six per Cent. it is Usury; so when Part of the Time is before, Part after, the Court agreed that where there is no Contract before, or during the Continuance of the Money, the Payment after may be no Usury; but in this Case there being a Pawn given, and the Broker refusing Delivery, unless so much more were paid. *Per Curiam*, Judgment *pro* Plaintiff that he forfeit 75 *l.* &c. *The King* against *Walker*, *Trin.* 21 *Car.* 2. *B. R.* 2 *Feb.* 53 *l.*

5. In an Action of Debt upon a Bond, the Defendant after Oyer pleads the Statute of Usury, and that it was upon an usurious Contract, &c. Upon Evidence it appeared, that the Wife of the Plaintiff used to lend Money to be paid by the Week, and that she lent to the Defendant 20 *l.* to be paid by 20 *s.* by the Week, and 1 *s.* 6 *d.* by the Week for Interest; and that the Defendant paid the Interest, which amounted to 30 *s.* when the Money was lent, and that the Wife exacted and received it; and upon this Evidence *Holt C. J.* ruled it to be an usurious Contract by

by the Husband, sufficient to discharge and avoid the Obligation *civilit*, tho' not sufficient to charge the Husband *criminaliter*; and it was found for the Defendant. *Barnet and Tompkins, East. 5 W. 3 M. B. R. Skin. 348.*

## S E C T. XIV.

Of Contracts to pay Money at a certain Time if Persons be then alive.

**C**ovenant; upon Evidence the Case was, One *Gower* delivered to *Aspley, Anno 26 Eliz. 100 l.* who by Indenture covenanted with *Gower* that he would pay to every of the Children of *Gower*, which were then alive, and should be alive at the End of ten Years, 80 *l.* *Gower* having then five Daughters, and for Assurance thereof mortgaged his Manor of *W.* and was bound in a Statute of 500 *l.* and whether this were Usury or not was the Question. And all the Judges resolved that it was not, for it is a mere casual Bargain, and a great Hazard; but that in ten Years all the

## Cases concerning Usury.

Daughters, or some of them will be dead; and if any of them be not alive, he shall save thereby 80 *l.* but if it were that he should pay 400 *l.* at the End of ten Years, if any of them were alive, it were a greater Doubt; or if it had been that he should pay at the End of one or two Years 300 *l.* if any of the said Children were alive, that had been Usury; for in Probability one of them would continue alive for so short a Time; but in ten Years are many Alterations. *Hil. 42 Eliz. C. B. Bedinfield v. Aspley, Cro. Eliz. 741.*

2. Between *Reighnolds*, Plaintiff, and *Clayton*, Defendant, in an Action of Debt on a Bond of 60 *l.* the Case was, *Clayton* requested *Reighnolds* to lend him 30 *l.* and on Communication betwixt them *Reighnolds* does lend *Clayton* 30 *l.* 6 Dec. 34 *Eliz.* until the 2d of *June* next following, to pay him for the Principal and Loan of it 33 *l.* at the said 2d of *June*, if the Son of the Obligee be then alive; and if he die before the said Day, that then he shall pay him but 27 *l.*

*Note y-e-m. longan- only goes to the interest & a small part of the principal.*

which was 3 *l.* less than the Principal: And it was resolved by the whole Court, that it was an usurious

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Contract within the Statute according to the Opinion of Popham Ch. J. in *Burton's Case*, and for the Reasons there given by him, *Usura dicitur ab usu, et are, quasi usucera*, i. e. *Usus æris: Et Usura est commodum certum, quod propter Usum rei mutuæ recipitur.* And his Description agrees with this Judgment; for if on the first Contract he who lends reserves no certain Sum for the Loan; but *secundario speret de aliqua retributione ad voluntatem ejus qui mutuatus est, hoc non est vitiosum.* Vid. *Glan. l. 7. c. 16. and lib. 10. c. 1.* what was the old Law of this Land concerning Usury. *Vide etiam Leges Sancti Edwardi, &c. Clayton's Case, Pas. 37 Eliz. C. B. 5 Co. 70.*

3. In *Mason v. Fulwood*; the Case, it seems, was on a Contract for Payment of the principal Money, and a Sum for the Forbearance of it above the common Interest, after three Months, if *J. S.* should so long live; but if *J. S.* died within three Months, that then the whole should be lost. And whether this Contract was usurious was the Question.

4. It was agreed on the one Side, that the Contract is usurious where the

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Loss

## Cases concerning Usury.

Loss of the Interest is only ventured; otherwise where the Loss of the Principal is also in Danger. 2 Roll. Rep. 77, 78. *Mod.* 397. 2 *Cro.* 507. 3 *Cro.* 633. 5 *Co.* 69. *b.* *Burton's* Case. But supposing the Contract to be usurious, that will not affect *Mason*, who is a third Person, and not privy to it, and so is *Mod.* 752. in which Case there is a Difference made between the Statutes of Usury and Simony.

5. *Pemberton contra.* *A.* agrees with *B.* that for the Loan of 30 *l.* he will pay him 6 *l.* *per* Month, after three Months; and if he dies within the three Months, the whole shall be lost; this is after the Rate of 40 *l.* *per* Cent. which being great Profit and small Hazard, if it should not be Usury, the Statute would be entirely evaded and rendered ineffectual.

6. *Obj. Burton's Case. Answer.* That Case is not to the Purpose, for it depended on another Reason; for there the Defendant might have paid the Money within such a Time, and defeated the Plaintiff of his Profit; but having slipped that Advantage, he should not avoid it afterwards.

7. *Obj.*

7. *Obj.* 2 *Roll. Rep.* 47, 48. *Ans.* These are Bottomry Bonds which are allowed for the Benefit of Trade, and also there the Hazard of the Seas is very great.

8. *Obj.* Here the Principal is in Danger if the Party dies within three Months. *Ans.* So it is if it should be on the Death of twenty Men, or if it had been for a Week or a Day.

9. C. J. *Tremain's Case*, 2 *Cro.* 507. is strong against *Pemberton*; and there are several Cases where the Construction to make it no Usury tends to great Charity in supplying the present Necessity of some People, who have only Reversions or Offices, &c. which is as good a Reason as the Advancement of Trade. *Mason v. Fulwood*, *Tryn. Term* 4 *Jac.* 2. *B. R. Comb.* 92, 93. *11 C. 1. Exch.* 467.

10. Debt on a Bond of 600 *l.* the Condition was, That whereas the Plaintiff lent 300 *l.* on an Adventure, on the Life of the Defendant; if therefore the Defendant should at three Months End pay 22 *l.* *Premium*, and the 300 *l.* Principal; or if he should, after the three Months, pay Six-pence for every Pound *per Month* for the *Premium*; or if the Plaintiff should

## Cases concerning Usury.

should die within six Months, then the Bond to be void. The Defendant pleads *Quod corrupte agreatum fuit*, for the Loan of 300*l.* and Interest to be paid *ut supra*, and that it exceeded the Rate of 6*l.* per Cent. to which the Plaintiff demurs. *Mason and Abdy, Trin. 1 W. & M. B. R. Comb. 125. R. L. Carth. 1. Nov. 2.*

## S E C T. XV.

## Of accepting Goods for the Forbearance of Money.

**D**EBT. The Case was, *Pollard* sold to the Defendant two Oxen, 22 *June*, 22 *Eliz.* for six Pounds six Shillings and Eight-pence, to be paid at *All-Saints* next; and at the same Day *Scoly* required of him a longer Day for Payment, and *Pollard* gave him Day till the first of *May* next, paying to him for the Forbearance of his Money three Quarters of Wheat which was above the Value of ten Pounds *per Annum* for a hundred Pounds, according to the Statute of 13 *Eliz.* and the Defendant in Debt for the six Pounds six Shillings and Eight-pence doth plead this, and would

would avoid the Contract; and the Opinion of the Justices was, that the Statute doth not make the Contract void which was duly made, but doth only avoid all Contracts for Usury; and this last Contract is void, being against the Statute; but the first was good, being made *bona fide*. *Nota*; *Hill. 20 Eliz. in Banco Reginae*, in an Information by *Mallory v. Bird*; if one contracts to have twenty Pounds for the Loan of an hundred Pounds, if he taketh nothing of the twenty Pounds he is not punishable by the Statute; but if he taketh any Thing, if but one Shilling, this is an Affirmance of the Contract, and he shall render for the whole Contract. *Pol-lard v. Scoly, East. 25 Eliz. C. B. Cro. El. 20.*

## S E C T. XVI.

## Of Brokerage and Bettoyry.

**I.** ERROR of Judgment on single Bill, the Defendant pleads unusual Agreement that the Plaintiff lent the Defendant 10*l.* and if the Ship return, to pay 3*l.* to which the  
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## Cases concerning Usury.

Plaintiff demurred; and *per Curiam* this is good and bare Bottomree. *Trin.* 24 *Car.* 2. *Cham* and *Taylor*, 3 *Keb.* 62.

2. *Hill v. Snow.* *Baldwin* moved in Arrest of Judgment in Debt on corrupt Agreement, that 7. S. on 21 *l.* Money lent, should pay to such Persons as the Plaintiff should name, 30 *l.* at the End of six Months, if the Ship returned, or did not go forth, (as indeed it did not) and that the Defendant for Brokerage should have a certain Sum, the Defendant to bear the Hazard of the Sea, which he conceived not Usury; but *per Curiam* the Jury have found this Usury, and the Court will now presume it, That the Action is brought against the Broker, whereas by the 12 *Car.* 2. the Action is to be brought against the Party who lent, which was 7. S. to whom the Bond was made. Also by *Wingfield* for the Defendant, It's not like *Burton's* Case, but the Hazard goes to the Principal, and is a probable one, as 2 *Cro.* 507. *Roberts v. Tremain.* The Court agreed Bills of Bottomry good; but *contra* in this Case where the Possibility is remote, and the Money lent by *Snow.* *Mich.*

14 Car. 2. 5 Nov. B R. 1 Keb. 358.  
*And by the same Reporter, p. 359.*  
 6 Nov. same Term. *Snow* and *M.* agreed that *S.* should lend, and *M.* should name, and that such Person should bear the Peril of the Sea: Also in the same Action is another Count against the Defendant, as a Solicitor and Procurer of *H.* and if either of these Causes of Action fall, it's against the Plaintiff for the whole. *Jones* for the Plaintiff, That it's well enough, and no Hazard appears, being to be paid at Return of a Ship *tunc in Servitio Domini Regis*, which the Court cannot adjudge of; but it's in the Jury, for the Ship might be within a Mile of Harbour. *Twissden*: Had this Matter been found specially, it had been no Usury; *contra* on general Verdict as here; which the Court agreed. 2. As to the Brokerage it's well enough, the Defendant lending his own Money; *per Curiam*, though another Name be used. 3. One Action cannot be grounded on several Statutes, where several Penalties are given against several Persons; *contra* upon several Offences in the same Statute. Judgment for the Plaintiff.

3. Debt

Bottomry.

3. *Debt on Bond.* The Condition (on Oyer) was to pay so much within sixty Days after the Return of a Ship, or at the End of thirty-six Months, which shall first happen, according to Articles of Bottomry: The Defendant pleaded the Statute of Usury; the Plaintiff replied, *Non corrupte agreatum fuit*, to which the Defendant demurred. *Holt*: Where a Man pleads directly to a Bond, there the Plaintiff in his Replication ought to shew a Breach; but where the Defendant pleads another Matter than that which is in the Condition of the Bond, as the Plea of the Statute of Usury, in this Case the Party may well demur for the Insufficiency of the Plea, and need not assign a Breach. *Curia.* This is Usury apparent on the Condition of the Bond, being 19 *l.* 10 *s.* *per Cent.* and no Hazard of the Principal; but the Articles of Bottomry not being set forth, *per Dolben*, there may be something in the Articles that may hazard the Principal, and then it is not Usury; and therefore it was adjourned. At another Day, *per Cur.* It is not usurious, for it does not appear to be for Money lent or borrowed; and *per*

*Holt*, If I covenant to pay 100*l.* a Year hence, and if I don't pay it, to pay 20*l.* it is not usurious, but only in Nature of a *Nomine pene*. And Judgment was given for the Plaintiff. *Garret and Foot, 1 W. & M. B. R. Comb. 133.*

4. In Debt on Obligation, with Condition of Bottomree to pay 130*l.* when the Ship should return from *Norway*. The Defendant after Oyer pleads corrupt Agreement for lending 50*l.* to pay according to Condition, to which the Plaintiff demurred; and *per Curiam* it's no Usury, as in the Case of *Grene Attorney in C. B.* hath been lately resolved. Judgment for the Plaintiff. *Appleton v. Brian, 1 Keb. 711. Vide Stat. 6 G. 1. c. 18. sect. 12. ante.*

5. *Assumpsit, &c.* in which the Plaintiff declared, That the Defendant in the Consideration that the Plaintiff would procure 15000*l.* to be lent to the King, <sup>of a Pro-</sup> *&c.* upon an Act of Parliament for <sup>mise</sup> the Pound-Rate, in the Name of the Defendant, or of such other Person <sup>was nei-</sup> as he (the Defendant) should agree <sup>ther usu-</sup> to, he (the Defendant) would pay un- <sup>rious or</sup> to the Plaintiff 600*l.* and the Plaintiff <sup>extorsive.</sup> avers that he procured 15000*l.* to be lent

## Cases concerning Usury.

sent to the King, &c. by Sir *Walter Plummer*, in the Name of Sir *Walter Plummer*, by Agreement of the Defendant; and now this Action was brought for the 600 *l*.

6. Upon *Non Assumpsit* pleaded the Plaintiff had a Verdict, and it was moved in Arrest of Judgment that the Consideration of this promise was extorsive and usurious, and by Consequence unlawful, or at least this was Brokeage, and so prohibited by the last Statute against Usury.

7. But after Debate it was resolved *per Curiam*, That this Consideration was neither extorsive or usurious, neither was it Brokeage within the Intent of that Statute; for here neither the Borrower or the Lender was to pay the 600 *l*. *Premium*, but a Third Person.

8. And *per Holt* Chief Justice, If *A*. owes *B*. 100 *l*. who demands his Money, and *A*. acquaints him that he hath not the Money ready, but is desirous to pay it if *B*. can procure it to be lent by any other Person; and thereupon *B*. having present Occasion for his Money, contracts with *C*. that if he will lend *A*. 100 *l*. he will give him 10 *l*. and hereupon *C*. lends the Money, and the Debt is paid



paid to *B.* this is a good and lawful Contract between *B.* and *C.* for *B.* hath Benefit by it.

9. And the Plaintiff had Judgment.

10. *Nota*; The Truth of the Fact was, *Vinor* (as Executor to Sir Robert *Vinor*) had a considerable Sum of Money in the Exchequer, which being a Debt of King *Charles* the Second, was somewhat desperate; and now by procuring this 15000 *l.* to be lent to King *William*, the Defendant had Tallies for 6000 *l.* of his old Debt, and this being proved at the Trial, it made the Consideration better.

11. *Nota*; *Per Holt*, Chief Justice, Every Contract made for or about any Matter or Thing which is prohibited and made unlawful by any Statute, is a void Contract, though the Statute itself doth not mention that it shall be so, but only inflicts a Penalty on the Offenders; because a Penalty implies a Prohibition, tho' there are no prohibitory Words in the Statute.

12. As for Instance; in the Case of Simony the Statute only inflicts a Penalty by Way of Forfeiture, but doth not mention any avoiding of the Simoniack Contract; yet it hath been

## Cases concerning Usury.

been always held, that such Contracts being against Law are void.

13. So he held, that if a Scrivener contracts for more than five Shillings for procuring the Loan of 100*l.* such Contract is void. *Mich. 4 W. 3 M. B. R. Bartlet v. Vinor, Carth. 251.*

## S E C T. XVII.

## Of Sureties for others, and Counterbonds.

1. **D**EBT upon an Obligation of 200 *l.* The Defendant pleads the Statute of 37 *H. 8.* and 13 *Eliz.* of Usury, in Avoidance of the Bond, and shews that he was indebted to one *Alder* in 100 *l.* and agreed with him for the Forbearance of that 100*l.* for a Year, that he would give him 30 *l.* and make a Bond to *Alder* of 60 *l.* for the Payment of the said 30*l.* and for the Payment of the 100*l.* Principal, he and *Alder* entred into this Bond of 200 *l.* to the Plaintiff; so it being made upon this usurious and corrupt Contract is void. *Et hoc, &c.* The Plaintiff says that *Alder* was truly and justly indebted to him in

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in 100*l.* and that for the Payment of this just Debt of 100*l.* he and the Defendant entred into this Bond to the Plaintiff; and that he was not knowing and privy to any corrupt Agreement between the Defendant and *Alder. Et hoc, &c.* And it was hereupon demurred. *Tanfield* Serj. for the Defendant moved that the Replication was not good, because he does not deny the corrupt Agreement alledged in the Bar, but by *Nient dedire* confesses it; and altho' he were not privy to the corrupt Agreement it is void; for otherwise it would be a Practice for every Usurer to avoid the Statutes; for he would always be justly indebted in the principal Sum, and would contract for the Usury Money in his own Name, and take the Assurance of it to himself; but to be assured of the Principal he would cause the Bond to be made to one to whom he is justly indebted, who should not know of the Bargains between them; and so by such Practice they would escape out of the Statute of 13 *Eliz.* therefore this Bond being made upon such corrupt Agreement is void. *Gawdy, Telverton* and *Williams* held, that the Re-

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## Cases concerning Usury.

Replication is good ; for in as much as it is averred, that it was made unto him for a sue and just Debt, and that he was not knowing or privy to any corrupt Agreement between them, it is not reason he should be delayed of his due Debt ; for as on the one Side it may be said to be the Means to defraud the Statute ; so on the other Side it may be a greater Mischiefe to a true Creditor, when he shall take Security by Bond, with Sureties for his Money, if it should be examined whether there were any corrupt Agreement betwixt his Creditor and his Sureties, whereof he cannot by Intendment have any Consequence ; and it would be a Means to draw in Question every Debt, and to punish one who is not privy to any corrupt Agreement : Wherefore it being confessed by Demurrer, that this Bond was made unto him for a true Debt, and that he was not privy to any corrupt Agreement between them, the Bond is good, otherwise there might be great Prejudice to true Creditors. For peradventure, upon the making the Bond, he delivered up his antient Bond ; or if his Debt were

were by Contract, by the taking that Bond his Debt should be gone: Wherefore *Fenner* doubted thereof, because it being grounded upon Corruption is altogether ill; and every one is to take heed to his Assurance at his Peril. *Popham* was absent; wherefore the other three adjudged it for the Plaintiff. *Ellis v. Warnes, Pas. 1 Jac. B.R. Cro. Jac. 32.*

## Counterbonds.

2. In Debt upon a Bond the Case was, That *Basset* was bound with *Prowe* as his Surety to one *Preston* in a Bond of 500 *l.* and that was upon a corrupt and usurious Contract against the Statute; and *Prowe* was bound unto the Plaintiff in a Bond as a Counterbond, to save the Plaintiff harmless from the said Bond of 500 *l.* *Basset* is sued by *Preston* upon the said Bond, and so damnified; and thereupon sued *Prowe* upon the Counterbond, who pleaded against *Basset* the Statute of Usury, pretending that all Assurances depending upon such usurious Contracts were void by the Statute: But by the Opinion of *Wray*



## Cases concerning Usury.

*Wray* C. J. the same is no Plea; for the Statute is, that all Bonds, collateral Assurances made for the Payment of Money lent upon Usury shall be utterly void; but the Bond here upon which the Action is brought was not for the Payment of the Money lent, but for the Indemnity of the Surety. *Basset and Prowe's Case, Pas. 26 Eliz. B. R. 2 Leon. 166.*

3. Debt upon Obligation, conditioned to save him indemnified from an Obligation, wherein the Plaintiff and Defendant were obliged to one *W. &c.* and from all Suits and Actions concerning it. The Defendant pleaded the Statute of Usury, and that it was *corrupte agreatum* between him and *W.* that the Defendant for the Forbearance of 20 *l.* for a Year should give to *W. 10 l.* if *A.* his Son was then alive; and that the Obligation was made for that Cause, and so void, which the Plaintiff might have pleaded in Debt against him by *W. &c.* and it was thereupon demurred. And *Williams* moved that it was not any Usury, in regard the Payment of the 10 *l.* is appointed to be upon an Incertainty, viz. the Life of *A. &c.* But *Anderson, Walmsley* and *Owen,*

*Owen, (Glanville absente)* held it to be Usury; for the corrupt Agreement (which is confessed by the Demurrer) makes it Usury; and it is the Intent makes it so, or not so: For if there be a Wager betwixt two to have 40 *l.* for 20 *l.* if one be alive at such a Day, that is not Usury, for the Bargain was *bona fide*, and not for Loan; but if the Intent hereby was to have a Shift it is otherwise: But here forasmuch as the Condition was to save him harmless from all Suits, which he had not done, nor doth the Defendant answer thereto, but to the Obligation only, they held the Plea to be ill; for altho' the first Obligation were void, yet the second Obligation is forfeited, because the Plaintiff had not saved him harmless from Suits concerning it. *Button v. Downham, Trin. 40 Eliz. C.B. Cro. Eliz. 642, 643.*

4. In Debt upon an Obligation by P. the Defendant pleaded, that he himself borrowed of one *Watson* a certain Sum of Money, paying for the Forbearance thereof excessive Usury; and that the Plaintiff was bound with the said Defendant to the said *Watson* for the Payment thereof; and

and that he himself by this Obligation, upon which the Action is brought, was bound to the said Plaintiff, to save him harmless against the said *Watson, &c.* and because that this Bond was a Counterbond for the Payment of excessive Usury: And it was holden by *Manwood*, that the same was a good Bar; for here the Plaintiff when he was impleaded upon the principal Bond might have discharged himself upon this Matter, and therefore his Laches shall turn to his Prejudice; and therefore the Issue was joined upon the excessive Usury. *Potkin's Case, Hill. 19 Eliz. B. R. 3 Leon. 63.*

5. Debt upon an Obligation, conditioned to discharge or save the Plaintiff harmless from an Obligation, wherein the Plaintiff, as Surety for the Defendant, was obliged to *7. s.* to pay 100 *l. &c.* The Defendant pleads, that the said Obligation to *7. s.* was upon an usurious Contract, and pleads the Statute of Usury, and concludes, *Et sic non damnificatur*; and hereupon the Plaintiff demurred. And it was moved that it was not any Plea; for altho' the Bond be void, yet he ought to save him harmless

less from Suit, &c. and here he has paid the Debt. *Tanfield*: The Plea is good, otherwise the Statute of Usury should be defrauded; for by a Compact the Usurer would sue the Surety, and he should pay him, and have his Remedy upon his Counterbond. But all the Court held it to be no Plea; for he ought to take heed to save his Surety harmless; wherefore it was adjudged for the Plaintiff. *Note the Reason conceived; for that the Surety by Intendment cannot know of the corrupt Contract to plead it in Avoidance of the Bond; wherefore the Principal ought to take Care thereof.* *Robinson v. May*, Mic. 39 and 40 El. B. R. Cro. El. 588.

## S E C T. XVIII.

Of Usurious Contracts concerning Rents, Leases, Mortgages and Purchases.

1. Indictment on the Statute of Usury for taking 7 l. 10 s. for the Use of 300 l. for a Quarter of a Year, worth upon Not guilty pleaded it was tried 30 l. per by *Nisi prius* before *Hale C. J.* at Ann. conditioned to be void if he paid his 300 l. at the End of four Years.

*Guild-*

## Cases concerning Usury.

*Guildball*, where upon Evidence the Case fell out thus: *Brown* had a Lease from the Earl of *Suffolk* of a House for forty Years at the Rent of 5*l.* per *Ann.* *Brown* agreed with *Drue* to assign the Term to him for 300*l.* but *Drue* having not the Money, *Drury* by Agreement with *Drue* paid the 300*l.* and took the Assignment to himself, and then *Drury* let the House to *Drue* for thirty-nine Years and three Quarters, after the Rent of 35*l.* per *Ann.* of which 5*l.* was to be paid to the Earl of *Suffolk*, and the remaining 30*l.* to *Drury* for his own Use. *Drue* covenanted to pay the Rent, &c. and *Drury* covenanted that if at the End of four Years *Drue* paid the 300*l.* then the Rent should cease, and he would convey the Residue of the Term to *Drue*. *Per Hale* C. J. this is not Usury within the Statute, for *Drue* was not obliged to pay the 300*l.* to *Drury*, but is at his Election to pay it if he will, and to determine the Rent by that Means, and have the Term; so that 'tis no more in Effect than a Bargain for an Annuity of 30*l.* yearly for thirty-nine Years and three Quarters, for 300*l.* to be secured in this Manner, determinable



minable sooner if the Grantor pleases; but the Grantee has no Remedy for his 300*l.* and cannot recover it unless the Grantee thinks fit to pay it back at the End of the four Years, and so the Acceptance of the 7*l.* 10*s.* is not Usury: But if *Drury* had took Security for Re-payment of the 300*l.* or it had been by any collateral Agreement to be repaid, and all this Method of bargaining a Contrivance to avoid the Statute, this had been Usury; but as it is, 'tis no more than a Purchase of 30*l.* Annuity for thirty-nine Years and three Quarters for the Sum of 300*l.* determinable by the Grant or at the End of four Years, if he pleases; and accordingly the Jury found the Defendant Not guilty. *Rex v. Drury, Easter 23 Car. 2. B.R. 2 Lev. 7.*

2. *Trespass de clauso fracto* in *N.* Upon Not guilty pleaded a special Verdict was found, that *Cyprian Cory* was seised in Fee of the Land in Question; and that it was agreed that one *Mary Adington* should lend unto him 150*l.* and for the Security of the Repayment thereof, *Cyprian Cory* leased unto the said *M.* this Close for sixty Years, to commence at the End

F

of

## Cases concerning Usury.

of two Years, upon Condition that if he paid the 150 *l.* at the End of two Years, that the Lease should be void. And it was further agreed betwixt them, that the said C. C. for the deferring and giving Day of Payment of the said 150 *l.* for two Years, should pay unto the said M. for Interest yearly 22 *l.* 10 *s.* quarterly, if the said Mary should live so long; that in Performance of this Agreement she lent the said C. C. 150 *l.* and he made the said Lease for sixty-six Years, and granted by Fine to the said M. A. an annual Rent of 22 *l.* 10 *s.* to be paid quarterly, if she lived so long, and afterwards conveyed the Inheritance to the Plaintiff, and that the said 150 *l.* was not paid; and that the said Mary took to Husband the Defendant *Trenayne*, who entered for Non-payment; *Et si super totam, &c.* The first Question was, Whether it was an usurious Contract within the Statute, because it was a meer casual Bargain; for if she died before any Day of Payment of the Rent, the Rent was gone, and yet she should retain the 150 *l.* for two Years, and pay nothing for it; and it was resolved that it was an usurious

usurious Bargain ; for by Intendment she might live above two Years, and it is an apparent Possibility that she should receive that Consideration whereby she is within the Statute. *Vide 5 Co. fol. 70. Clayton's Case.* 2dly, It was moved, Whether this Lease being taken for the Payment of the principal Money, and not for the Payment of any Part of the Usury, be within the Statute to make the Bargain void ; and it was resolved that it is, because it is for the Security of Money lent upon Interest, and for the securing of that which the Statute intends he should lose ; for otherwise it would be an Evasion out of the Statute, that he would provide for the securing of the Payment of the Principal, whatsoever usurious Bargain was made, which the Law will not permit. 3dly, It was objected, that this Verdict found that there was an Agreement between them in the same Manner *prout*, &c. but it doth not find that it was *corrupte agreatum*, which ought to be precisely found, to draw him to be an Offender within the Statute ; and therefore in an Information, if it be not alledged that *corrupte agreatum fuit*, it

## Cases concerning Usury.

it is not good ; and upon the Statute of the 5 *Eliz.* of Perjury, if it be not alledged that he *voluntarie et corruptè commisit perjurium*, it is not good ; *sed non allocatur* ; for there is a Difference betwixt an Information, which ought to be precisely alledged, and a special Verdict, wherein all the Circumstances are found, which being apparent to the Court to be usurious, and cannot by Intendment have any other Construction, it sufficeth ; and here it is apparent that the Money was lent for Interest, and is more than the Statute permits ; wherefore being Usury apparent, the Court shall adjudge it accordingly : And one *Higgins* and *Merwin's* Case was cited to be adjudged, that if the corrupt Agreement be not expressed in the Verdict, and the Matter is apparent to the Court to be Usury, there the Jury needs not to shew that it was corruptly, for *res ipsa loquitur* ; otherwise it is if it be not implied ; wherefore it was adjudged for the Plaintiff. Note, That Justice *Doderidge* took these Differences in Cases of casual Usury. First, If I lend 100 *l.* to have 20 *l.* at the Year's End upon a Casualty ; if the Casualty goes to the Interest only, and not

not to the Principal, it is Usury; for the Party is sure to have the Principal again, come what will; but if the Interest and Principal are both in Hazard, it is not then Usury; and it was therefore adjudged in the Common Bench in *Dartmouth's Case*, where one went to *Newfoundland*, and another lent unto him 100 *l.* for a Year to victual his Ship, and if he returned with the Ship he would have so many 1000 of Fish, and expresses at what Rate, which exceeded the Interest which the Statute allows; and if he did not return, that then he would lose his Principal: It was adjudged to be no Usury. Secondly, If I secure both Interest and Principal, if it be at the Will of the Party who is to pay it, it is no Usury; as if I lend to one 100 *l.* for two Years, to pay for the Loan thereof 30 *l.* and if he pay the Principal at the Year's End he shall pay nothing for Interest; this is not Usury; for the Party hath his Election, and may pay it the first Year's End, and so discharge himself. *Trin. 14 Jac. Roberts v. Trenayne.*

*Cro. Jac. 507, 508, 509.*

3. Ejectment of a Messuage in *L. -* <sup>*Case of mis-*</sup>  
Upon Not guilty pleaded, and Issue <sup>*take of mis-*</sup>  
there- <sup>*ever.*</sup>



## Cases concerning Usury.

thereupon, a special Verdict was found, that *Robert Guilbank* was possessed of a Lease for Years of the said Messuage; and upon 23 *May* 1617 it was agreed betwixt him and *John Smith*, Lessor for the Plaintiff, that he should lend to the said *R. Guilbank* 120 *l.* for a Year then next following, upon Security for the Re-payment of the said 120 *l.* and of 12 *l.* for the Interest thereof upon *May* 24, 1618. and that he lent the said 120 *l.* accordingly; and the said *R. G.* the said 23 *May* 1617 was obliged with him in a Bond of 260 *l.* with a Condition for the Payment of the said 132 *l.* upon the 24th Day of *May* next ensuing; and for the better Assurance of the Payment of the said 132 *l.* he then made this Lease by Indenture to the said *John Smith*, with a Condition that if he paid the said 132 *l.* at the Day and Place mentioned in the Condition of the Obligation, that then the Assignment should be void; and they find that the Scrivener who drew this Obligation and Assignment, by mistaking the said Agreement betwixt them, drew it in this Manner; and that the said *J. S.* sealed the Counterpart of the

the said Indenture of Assignment: They find the Statute 37 H. 8. E<sup>3</sup> 13 Eliz. of Usury, and that the said 132 l. was not yet paid; whereupon *John Smith* 19 Jac. entred and made the Lease to the Flaintiff, who entred, and the Defendant evicted him: *Et si super totam materiam, E<sup>3</sup>c.* And here upon Argument two Questions were moved: First, Whether these Words, The 24<sup>th</sup> of *May* next ensuing, shall be intended *May* the Twelve-month after; for then there cannot be any Question of the Usury; or shall be intended the same Month of *May*, which was the next Day following: And the Question was, If usurious or no? And thereupon *Doderidge* and *Houghton* held, That [next ensuing] shall be intended of the same Month of *May*, which was the next Day after; unless the Circumstances of their Agreement had been found, That the Agreement was to lend it for a Year, and to make Payment thereof at the Year's End; then these Words doubtful to which they should be referred, may be intended and extended to be in *May* Twelvemonth following, and the Doubts of the Usury taken away,

## Cases concerning Usury.

as in 23 Dy. 376. But generally 24

*Mait* next following shall be intended to be 24 *May* of the same Month.

But *Lee* Chief Justice held, That next following shall not be referred to *May* next following, unless some Matter in the same Deed might be shewn, and not a collateral Agreement found by the Jury, nor any collateral Decd.

But they all held, although it should be expounded to refer to *May* 24 the same Month and Year, which is the next Day (as it was in *Prescot's* Case); yet forasmuch as the Agreement is found to be to make the Loan for a Year, and that the Assurances were for the Payment at the End of the Year, and by the Scrivener's Mistake it is made payable the next Day, it is not Usury within the Statute; for there was not any corrupt Agree-

ment between them, but a true and absolute Agreement; and the Act of a Stranger shall not bring him within the Danger of the Statute, especially it being found that he did not require his Payment until after the Year. But *Lee* Ch. Justice said, If he had sought by Reason of this Misprision to have taken Advantage of the Forfeiture for Non-payment upon the

next

next Day, peradventure it would have discovered a corrupt Intention in him, and that he knew of that Misprision at the Beginning, and would take Advantage thereof, and this should bring him within the Statutes of Usury; but as it is found, is clear it is not any Usury, nor the Assurance to be avoided by the Statute; wherefore it was adjudged for the Plaintiff. *Buckley v. Guilbank* in *B.R. Trin. 20 Jac. Cro. Jac. 677.*

4 In a Replevin brought by *Humphry Burton* against *H. H.* he avowed, because *Thomas Woodhouse, Esq;* was seised of the Place where, *Esq.* containing ten Acres in *Hicklyn* in the County of *Norfolk, inter alia*, and being so seised 17 *Julii Anno 21 Eliz.* by his Deed granted to *A. G. Esq;* a yearly Rent of 20*l.* issuing out of the Place where, *Esq. inter alia*, to perceive to him and his Heirs at the Feasts of the Nativity of *Christ* and *St. John Baptist* yearly to be paid; the first Payment to begin at the Feast of the Nativity of *Christ*, which shall be *A.D. 1580*; and afterwards *A.* by Deed acknowledged before Justices of Peace and Clerk of the Peace of the said County, and

## Cases concerning Usury,

inrolled according to the Statute, did bargain and sell the said Rent to the Defendant and his Heirs, who for the Rent behind did avow: The Plaintiff in Bar of the said Avowry pleaded the Statute of Usury, and alleged that the said 17 *Julii Anno 21, between the same Thomas Woodhouse and A. G. such Agreement was made by way of corrupt Bargain, to wit, that the aforesaid A. should lend the aforesaid Thomas Woodhouse 100 l. and that the same Thomas should grant to the said Anthony and his Heirs the Rent of 20 l. under Condition, that if the said Thomas should pay to the said A. 100 l. 17 *Julii* 1580, that then the said Rent should cease; on which corrupt Agreement Thomas there then received the said 100 l. and there then granted the said Rent accordingly under such Condition as is aforesaid, according to the said Agreement; which said yearly Rent for the aforesaid 100 l. to be paid in Form aforesaid exceeds the Rate of 10 l. per Cent. per Ann. against the Form of the Statute, &c. and conveyed a Lease of the Land to the Plaintiff for twenty-one Years; and note; the Distress was taken 27 Dec.*



*Dec. Anno 33 for 20 l. behind at Midsummer* then past; upon which the Avowant did demur in Law; and Judgment was given for the Avowant; for tho' it was objected that the Plaintiff in his Bar to the Avowry has alledged that the said Grant was on a corrupt Contract against the Statute, and the Avowant has demurred thereupon, by which he has confessed all Matters in Fact; yet because on the Matter disclosed in the Bar, it appears to the Court that it was not a corrupt Contract against the said Statute, and so his Allegation of it repugnant to the Matter shewed by himself in his Bar to the Avowry; and a Demurrer is not a Confession of all Matters in Fact, but of all such Matters in Fact which are well and sufficiently pleaded: For this Cause Judgment was given for the Avowant: And the Cause that it was not against the Statute of Usury was, That nothing was to be paid by *Thomas Woodhouse* the Grantor, within a Year and a Quarter after the Grant made; for within the 17th of *July* 1579 and *Christmas* 1580, no Rent is appointed to be paid; and if the Grantor had paid the 100 *l.* the 17th of

of *July* 1580, the Rent should cease without any Thing paying for the said 100*l.* so that the Court said it was a plain Bargain and Purchase conditional of such Rent, and no Usury. It was in the Election of the Grantor to have paid the said 100*l.* and to have frustrated the Rent, so that the Grantee (as the Nature of Usury is) was not assured of any Recompence for the Forbearance of 100*l.* for a Year, and the said Rent of 20*l. per Ann.* is but a Penalty to the Grantor, and Assurance to the Grantee for the Payment of the said 100*l.* But it was resolved by the whole Court, That if it had been agreed between the Grantor and the Grantee, that notwithstanding such Power of Redemption, that the 100*l.* should not be paid at the Day, and that the Clause of Redemption was inserted to make an Evasion out of the Estate, then it had been an usurious Bargain and Contract within the said Statute; for if in Truth the Contract be usurious against the Statute, no Colours or Shews of Words will serve, but the Party may shew it, and shall not be concluded or estopped by any Deed, or any other Matter what-

soever; for the Statute gives Averment in such Case. And *Popham C. J.* said, If *A.* comes to *B.* to borrow 100 *l.* *B.* lends it him if he will give him for the Loan of it for a Year 20 *l.* if the Son of *A.* be then alive; this is Usury within the Statute; for if it should be out of the Statute for the Incertainty of the Life, the Statute would be of little Effect; and by the same Reason that he may add one Life he may add many, and so like a Mathematical Line, which is *divisibilis in semper divisibilia.* *Burton's Case, Mich. 33 & 34 Eliz. B. R. 5 Co. 69.*

5. Demurrer in *Ejectione firmæ.* Of Mortgage Land for 100 *l.* and takes Bond for the Interest of 8 *l. per Annum*, payable half-yearly, whether that makes the Bargain usurious against the Statute, because, as it was pretended, the Use ought not to be paid until the End of the Year, and contracting to have it half-yearly, is not warrantable by the Statute: But the Court upon the first Argument at the Bar over-ruled it, That it is not any usurious Contract contrary to the Statute, because the 100 *l.* is let for a Year;

## Cases concerning Usury.

Year; and the Reservation is not of more, but of what is permitted by the Statutes; and although the Interest is reserved payable half-yearly, it is allowable; for he doth not receive any Interest for more or less Time than his Money is forborn; wherefore, without Difficulty, it was adjudged for the Plaintiff; and Error being brought in the Exchequer-Chamber, and the Error assigned in Point of Law, the Judgment was affirmed. *Grysell v. Whickcott*, Trin. 8 Car. 1. B. R. Cro. Car. 283.

6. The Defendant was indicted for purchasing Land of a Free-School at 20*l.* *per Annum*, which was worth 60*l.* which by *Williams* is no Offence, which the Court agreed. *Adjournatur*. *The King v. Evans*, Hill. 13 Car. 2. B. R. 1 Keb. 242.

S E C T.

S E C T. XIX.

Of usurious Contrads concerning Annuities.

1. *Cotterel v. Harrington, Pas. 6 Jac. C. B.* In Replevin the Defendant avows for an Annuity for 20 *l.* granted for Years, payable upon Demand, and alleges a Demand; the Plaintiff demands Oyer of the Deed, and by the Deed it appeared, that for 110 *l.* one Rent of 20 *l.* was granted for eight Years, and another for 20 *l.* for two Years, if *E. R.* and *T.* should so long live. The Plaintiff pleads the Statute of Usury, and sets forth the Statute and a special usurious Contract. If it had been laid to be upon a Loan of Money, then it was Usury; but if it be a Bargain for an Annuity, it is no Usury: But this was alleged to be upon a Lending. *Brownl. 180.*

2. Debt upon an Obligation of 300 *l.* conditioned for the Payment of 20 *l. per Ann.* during the Lives of the Plaintiff's Wife and Son; the Defendant pleaded the Statute of Usury,



Usury, and how he came unto the Plaintiff to borrow of him 120 *l.* according to the Rate of 10 *l.* *per* 100 *l.* who refused to lend the same, but corruptly offered to deliver 120 *l.* unto him, if he would be obliged to pay 20 *l.* *per Ann.* during his the Plaintiff's Wife's and Son's Lives; and thereupon the Defendant entred into the said Bond for Security of the Payment of the said 20 *l.* *per Ann.* unto them, which is about the Rate of 10 *l.* *per Cent.* and so the Bond supposed to be void; whereupon it was demurred; and after Arguments on both Sides resolved, That this (being an absolute Bargain in Consideration for the Payment of 20 *l.* *per Ann.* during two Lives, and no Agreement to have the principal Money) was out of the Statutes against Usury: But if there had been any Provision made for Re-payment of the Principal, although not expressed within the Bond, it had been an usurious Agreement, and lending within the said Statutes. And of this Opinion was the whole Court, who adjudged it for the Plaintiff. *Vide Co. 5 Rep. fol. 69. Burton's Case, and fol. 70. Clayton's Case. Statutes 37 H. 8.*

1. 9. and 13 *El. c. 8. Fontaine v. Grymes*, Mich. 8 Jac. B. R. Cro. Jac. 252.

3. Information upon the Statute Annuity of 13 *Eliz.* for Usury, it was held by all the Justices upon Evidence to the Jury. *Finch* gave to *Tanfield* 566 *l.* for an Annuity of 120 *l. per Ann.* during twenty-three Years; this is clearly no Usury, when there was no Communication before between them, to have any Consideration for the Loan of the 566 *l.* for this Annuity was purchased *bona fide* without any corrupt Intent or Bargain; and if it had been 40 *l. per Ann.* for forty Years for 100 *l.* it had been no Usury, no more than if one for 100 *l.* purchase Lands worth 40 *l. per Ann.* Another Matter was in this Case, That after the Grant of the said Annuity of 120 *l.* for twenty-three Years for the said 566 *l.* in Hand paid, *Tanfield* for the Assurance of the said Annuity infeofed *Finch* of Land worth 100 *l. per Ann.* to the Use of *Tanfield* and his Heirs; upon Condition, that if the Money was not paid, it should be to the Use of *Finch* in Fee; and all the Justices held it was no Usury, for the Mortgage was only for the

## Cases concerning Usury.

the Assurance of the Annuity. *Nota;*  
 In Dr. Goad's Case, *Trin. 19 Eliz.* in  
 the Exchequer, in an Information  
 for Usury, *Popham* and *Plowden* held,  
 that if a Man gives 100 *l.* for an An-  
 nuity of 20 *l. per Ann.* this is not U-  
 sury, for he shall never have his Stock  
 of 100 *l.* again. But *Bell Chief Ba-*  
*ron* held clearly, If two Men speak  
 together, and one of them desires the  
 other to lend him 100 *l.* and for the  
 Loan of it he will give him above  
 10 *l. per Ann.* and for an Evasion out  
 of the Statute they invent this Prac-  
 tice, That he shall grant to the other  
 30 *l. per Ann.* out of his Land for  
 ten Years; or he shall make a Lease  
 for 100 Years to him, and the Lessee  
 shall regrant it to him, upon Condi-  
 tion that he shall pay 30 *l.* yearly  
 and every Year during the ten Years.  
 In this Case the first Contract being  
 corrupt in Fraud of the Statute, this  
 is Usury, although he never has this  
 100 *l.* again. But if *bona fide* one  
 buys an Annuity of 40 *l.* for ten Years  
 for 100 *l.* this is no Usury, if the first  
 Communication was not corrupt. *Ex*  
*relatione Edward Coke. Tanfield v. Finch,*  
*Pas. 26 El. C. B. Cro. El. 27.*

## S E C T. XX.

Whether a second Contract will make void the first, or the first the second.

**D**Efendant indicted for Usury, in taking 9 *l.* for the Use of 45 *l.* for a Year, *contra formam Statuti*: The Case was, the Defendant lent the Prosecutor 45 *l.* upon a Pledge of Jewels, and it was agreed to pay the said Interest; after, the Prosecutor gave his Bond for the same Money, and the Bond not being discharged the Prosecutor was produced as an Evidence, and sworn by *Holt*, *de bene esse*, as he said; and he said it was a Question, Whether the new Bond was void or not; and he put this Case: A Man makes an usurious Contract, and gives him unlawful Interest, and agrees to give him a Bond for the Principal; and after, by a subsequent Agreement, gives a Bond for the Sum lent to *J. S.* to whom the Lender owes so much, in Satisfaction of his Debt, this Bond is not voidable by the Statute. If a Man lends Money for the legal Interest, and

## Cases concerning Usury.

and after a subsequent Agreement is made for more Interest, which is Usury, that will not avoid the first Contract. *The Queen v. Sewel*, alias *Beaus, Mich. 1 Ann. B. R. Far. 118.*

2. *Vaughan v. Chambers, Trin. 20 Eliz. C. B.* An Action of Debt brought upon a Bond; the Defendant pleaded the Statute of Usury, and shews a corrupt Agreement for Money lent in the Year 33 to be paid in 33, and afterwards in 35 a new Bond given for Part of the first Sum; and it was pretended that this Bond was void; but it was adjudged, because the first Bond was no Corruption, the latter should not be. *1 Brownl. 73.*

## S E C T. XXI.

## Of confessing Judgment for Principal and Interest.

1. *Scire facias* upon a Judgment of 240*l.* The Defendant pleaded, That he borrowed of the Plaintiff 100*l.* and contracted to give unto him 20*l.* for the Loan for a Year; and for the Payment of that 120*l.* the Plaintiff would have the Defendant



dant to confess Judgment, and pleaded the Statute of Usury to avoid it. *Gosfrey* moved, That it was not any Plea; for the Statute of 13 *Eliz.* is, *All Bonds, Contracts, and Assurances collateral, &c. shall be void.* But here this Judgment cannot be termed an Assurance, nor be avoided by such a Surmise; and the whole Court was of that Opinion, That Judgments shall not be avoided upon such Surmises; for if there had been any such Matter, the Defendant might have pleaded it upon the Action brought, and not have suffered a Judgment; and although it may be a Practice to avoid the Statute, yet it shall rather be tolerated, than to avoid Judgments upon such Suggestions; wherefore Judgment was commanded to be entered by *Nil dicit*, because the Court upon a former Motion had given him Day for the Amendment of his Plea, and he had not altered nor amended it; for as he affirmed, it was his Matter, and he could not plead otherwise. *Middleton v. Hill, Mich. 39*  
*£ 40 El. B. R. Cro. El. 588.*

SECT.

## S E C T. XXII.

Of Pleading, Demurring and  
other Proceedings.

**I**N an Action of Covenant on Articles, whereby the Parties 8 *March* on Loan of 500 *l.* for seven Years from 12 *November* before, paying 15 *l.* half-yearly for Interest; the first Payment to be on *Pentecost* next and 11 *November*; and because thus he is to have seven Years Interest for six Years and a Half Loan; and thus, whether it be taken for a Half-Year's Payment, or for seven Years *secundum ratam*; therefore it being an usurious Contract, *Jones pro* Defendant demurred and prayed Judgment of the Court. *Lindly pro* Plaintiff, The Articles being that whereas the Plaintiff has lent to the Defendant from 12 *Nov.* last; therefore if any corrupt Agreement were, it must be pleaded; which the Court agreed, as this Case is. Judgment *pro* Plaintiff *nisi. Pas.* 18 *Car.* 2. *B.R. Dande* against *Carrier*, 2 *Keb.* 35.

2. Debt upon a Bond: The Defendant pleaded the Statute of Usury in Bar, that there was an Agreement between the Plaintiff and him, that the Plaintiff should deliver to him Wares of the Value of 20 *l.* and that the Defendant should pay for the same within six Months 34 *l.* upon which they were at Issue, and found against the Defendant. *Daniel* moved in Arrest of Judgment, that it not being alleged that the Obligation was made for the Payment of this Money, it was no Plea or Issue; *sed non allocatur*; for he shall not take Advantage of his own mispleading; and Judgment was given for the Plaintiff. *Peterson's Case, Trin. 30 Eliz. B. R. Cro. Eliz. 104.*
3. In Debt the Defendant pleads Plea. the Statute of Usury ill, as 3 *Cro.* 243. reciting it to be at the Parliament held the 25th of April 17 Car. 2. and concludes *Sic* void and corrupt *contra form. Stat. predict.* to which the Plaintiff demurred; and *per Cur.* by this particular Conclusion the Plea is ill, tho it be a general Statute; but had the Conclusion been *contra formam Statuti* generally, it were well enough; and Judgment for the Plaintiff.

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tiff *nisi*. *Palmer and Taylor, Pas. 27*  
*Car. 2. B. R. 3 Keb. 468.*

Plea.

4. In *Indebitat. & Infirmul comping.*  
*Set*, the Defendant pleads the Statute of  
 Usury, and that both *Assumpsits* are  
 of the same Sum, and that the Bar-  
 gain was that the Plaintiff should have  
 a Broad Piece, not said of what Va-  
 lue, but *Anglice* a 22 s. Piece for For-  
 bearance four Days of 10 l. which is  
 but Part of the Demand, which is of  
 several 35 l. and nothing said of the  
 rest; but being said for all the Goods  
 sold, it's well enough on Demurrer,  
 and a Plea to all; but if it were only  
 to one *Assumpsit* it would be ill as to  
 all. The Saying *quæ est eadem* is ill.  
*Smitb and Danvers*; but if he had  
 said the Sale on Account was but for  
 10 l. and by Fraud and Covin the  
 Plaintiff, to heighten that Sum, had  
 added an *Indebitatus* of the same Sum,  
 it would be well; but it is impossible  
 that on an Account of 10 l. they can  
 be found in Arrear 35 l. and Judgment  
 for the Plaintiff *nisi*. *Taylor and Her-*  
*bert, Pas. 26 Car. 2. B. R. 3 Keb. 303.*

5. Debt upon an Obligation of  
 100 l. dated 12 *Julii* 10 *Car.* with  
 Condition for the Payment of 58 l. at  
 the End of six Months; the Defen-

dant pleaded the Statute of 21 Jac. of Usury, which makes such an Obligation to be void, &c. The Plaintiff replies, That he lent the 50 *l.* for a Year, and that the Defendant should pay 8*l.* for the Forbearance for a Year, and that the Plaintiff should not demand it until the End of the Year; and, by the Scrivener's Mistake it was made payable at the half Year's End; and he, not knowing thereof, accepted of the said Bond: Wherefore, &c. The Defendant rejoins, that the Lending was only for half a Year, and that he was to pay for it 8 *l.* for that Time, and traverseth, That upon the said 12th of July it was agreed the Loan should be for one entire Year, or that he should forbear it for a whole Year. And hereupon the Plaintiff demurred: And *Rolls* for the Plaintiff shews, That the Bar was ill, because it was not pleaded, *Quod corrupte agreatum fuit, &c.* for so is the Course of Pleading. And the Plea is, That he should have for Interest for forbearing; and he doth not say *corrupte, &c.* And for this Cause the Court (*absente Brampton*) held, That the Bar was ill, and that the Replication is well enough. Secondly,

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## Cases concerning Usury.

condly, It was objected, That this Allegation is against the Words of the Condition. But all the Court held, He might well make such an Allegation; for it is the shewing of the true Agreement, That no Interest was to be paid by the said Agreement, but such as stood with the Law. Thirdly, *Rolls* excepted to the Rejoinder, because he makes thereby the Day to be Parcel to the Issue, which ought not to be, but he ought to have traversed the Agreement only; and therefore the Rejoinder to the Bar was ill; and this was the Opinion of the whole Court; but no Judgment, because the Plaintiff offered to accept his Debt, and the Defendant offered to pay it, *Et. Nevison v. Whitley, Trin. 14 Car. 2. B. R. Cro. Car. 501.*

Demurrer.

6. In Debt upon Obligation after *Oyer*, the Defendant pleaded an unusurious Contract to receive more Interest than due, to which the Plaintiff demurred; because it is not said, That at the Time of making of the Bond it was corruptly agreed, and the other does but incur the Penalty of the Statute, but does not avoid the Security, which the Court agreed

greed. But *adjournatur*. *Farrell v. Shan, Pas. 21 Car. 2. 2 Keb. 525.*

7. In Information against the De-Plea. Defendant for Usury, *Mich. 1673*, the Defendant pleads former Information the same Term depending in the *Exchequer*. 4 *H. 7. c. 20.* It's pleaded after Imparlance in Bar, to which the Plaintiff demurred generally; and *per Curiam*, being popular, it's a good Plea in Bar, and not like a civil Action twice brought, which is only in Abatement: Also being both the same Term, and no Day pleaded, which ought to be sworn, and in which Case there would be Priority, as its held on the Statute of Limitations, and so here, but being pleaded *ante exhib. bille*, viz. the first Day of Term; and in *C. B.* it was resolved last Term, That it is a good Plea in Bar; and the Court will examine the Record of the Bail, and of the coming in of the several Informations, and it might be pleaded by Fraud if exhibited by the same Party: Or the Demurrer specially shewing the Cause, but the general Demurrer confesseth it was *ante*; and *per Curiam* it ought to be quash'd if latter; *E3 Adjournatur* to search.

## Cases concerning Usury.

*Hutchins and Thomas*, Hill. 26 Car. 2. B. R. 3 Keb. 426. *And in the same Book*, P. 491. Trin. 27 Car. 2. *Hutchinson and Thomas seems to be the same Case in these Words*: Debt *tam quam* upon the Statute of Usury, taking 3 s. per Week; the Defendant pleads that *ante exhib. billæ*, Ridgley sued the Defendant for the same Matter, viz. the first Day of Mich. Term, and being both the same Days and no Priority appearing on Reference to *Livesy* Secondary, *Symson* pray'd Judgment for the Plaintiff; and by *Hale* Ch. Just. it not appearing on Declaration what Day the Plaintiff's Bill was exhibited, the Defendant should have shewed what Day it was, as on the Statute of Limitation, and *ante exhib. billæ* generally, is no Plea else, especially it appearing they were both exhibited the same Day, and the King hath Election. Judgment for the Plaintiff.

8. *Hinton v. Roffe*. Debt on a Bond; Defendant pleads *quod corrupte agreatum fuit*, that Interest should be paid for it above the Rate of 6 l. per Cent. Plaintiff demurs: And held good, for that the Plea does not shew what Interest, nor that the Bond was for

for the very Money, but only by Intendment, viz. *super agremento præd.* the Bond was given, and does not say expressly *pro eadem pecunia*: Judgment for the Plaintiff, For that they would not easily avoid a Bond, and the corrupt Agreement ought to be specially and particularly set forth, and the *Quantum* of Interest, otherwise the Plaintiff can never tell what to Answer. Judgment for Plaintiff. *Mich. 35 Car. 2. B. R. 2 Show 329.*

9. *The King v. Gaft or Garth.* The Indict. Defendant was indicted for usurious Lending 20 s. *ea intentione* to receive 23 s. within a Month, and that the Defendant did receive 3 s. for the Loan of 20 s. which, *per Curiam*, is not good, without saying *quod corrupte agreatum fuit*, & *ea de causa ex motione Hoskins* it was quash'd, being removed out of an inferior Court. *Mich. 15 Car. 2. B. R. 1 Keb. 629.*

10. Information in the *Exchequer*; Information. For that the Defendant, *per viam cor. tion.* *ruptæ bargan' & cheviansiæ fact'* between the Defendant and one *E. H.* received of one *J. H.* Administrator of the said *E. H.* betwixt the 23d of June, 14 Jac. 65 l. (*viz.*) for the Use and Occupation of an House in

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in C. in the County of M. from Midsummer 14 Jac. unto Michaelmas 14 Jac. 15 l. *Et pro absentione & detentione Solutionis* 1000 l. from the 16th of Apr. 1614, for six Months then following 50 l. *Ubi revera predict. Messuagium adtunc valebat dimittendo per Annum* 20 l. *& non ultra*; and therefore he demanded 3000 l. being the Treble of the Value of the 1000 l. so forborn; after Verdict for the Plaintiff, upon Not guilty pleaded, it was moved in an Arrest of Judgment, That this Information was not good, 1st, Because he does not shew the Certainty what the Bargain was, but generally, *per viam corruptæ, &c. sed non allocatur*: For it was said, That so was the usual Course in the *Exchequer*, being grounded upon the Receipt; and that is to be proved in Evidence: But it was agreed, That in Pleading, to avoid a Bond or an Assurance, it ought to be particularly pleaded and shewn; for the Party is privy to the Manner of this Contract, but the Informer is not privy thereto, and therefore it sufficeth him to shew the Particulars upon the Evidence. 2dly, Because it is not shewn,



shewn, that the House was not worth above 20 *l. per Annum* at the Time of the Bargain; for, peradventure, by Fire or Tempest it may fall, *in toto vel in parte*, so as at the Time of the Receipt it was worth but 20 *l.* And here *adtunc valebat* cannot be referred to the Time of the Bargain; for there is no Time laid thereof, but there be three Times alledged, (*viz.*) betwixt the 23d of June 14 Jac. 2dly, The Occupation of the House from *Midsummer* to *Michaelmas*. 3dly, The Forbearance of the Money from 16th of April 14 Jac. for six Months following; and then it is said, *ubi vera mensuragium predictum adtunc valebat*, &c. So it is uncertain to which of those Times *adtunc* refers; and if it should refer to the last, as properly *adtunc* always refers to the last Antecedent, as 28 H. 8. 19 Dy. *Bold's Case* is, that it ought to be so expounded: Then this is no Offence, and it is uncertain to which of the Times it shall refer, and so the Information is not good; for the Defendant ought to be certainly and precisely charged, who is to be fined and imprisoned, and not by Argument and implicitly: And Precedents were shewn, that in such

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Cases the usual Course is, to alledge it to be of such a Value and no more at the Time of the Bargain, when the Want of the Value of the House is the sole Offence and Cheivance which is pretended. And for that Purpose were cited Precedents in the *Exchequer*, *Trin.* 43 *Eliz.* rot. 102, betwixt *Harrison* and *Bagshaw*; and *Mich.* 43 *Eliz.* betwixt *Farnaby* and *Bath*; and *Trin.* 3 *Jac.* rot. 132, and *Loveday's* Case in the new Book of Entries; wherefore it was pray'd that the Defendant might be discharged: And after Argument at the Bar by the Attorney General and Serjeant *Chiburn* in Maintenance of the Information, and by *Thomas Crew*, *Danport* and *George Croke* for the Maintenance of the Exceptions, it was adjudged for the Plaintiff. *Bedo v. Sanderson*, *Mich.* 15 *Jac.* B. R. *Cro. Jac.* 440, 441.

## Information.

11. *Owen Morgan* exhibited an Information upon the Statute of Usury, for an usurious Mortgage made; and charged the Defendant, That *Cepit ultra 10 l. per Cent.* Forbearance for one Year, and that was out of the Issues, Rents and Profits which he took in *Middlesex* of Lands in *Gloucestershire*

*morganshire* in *Wales*, mortgaged to the Defendant.

*Manwood* Chief Baron said, That one might take the Rents of Lands in *Wales* in the County of *Middlesex*, but a Man cannot take the Issues and Profits of the Lands but where the Lands are: And *Leak's* Case was cited, where an Information was brought for cutting down of Wood, and converting it into Coals: And *Leak* the Informer laid down the Cutting to be in the Country where the Wood grew, but the Conversion of it into Coals in the County of *Middlesex*.

And *Manwood* said in the principal Case, That the taking of the Issues and Profits ought to have been laid where the Land was, and such was the Opinion of the whole Court. *Morgan's Case*, *Mich.* 22 & 23 *Eliz.* in *Scac.* 3 *Leon.* 238.

12. An Information was in the *Ex-Information* *chequer* against Sir *W. D.* upon the Statute of Usury; and upon not Guilty pleaded, the Informer gave in Evidence an usurious Contract upon a Bargain of Wares. The Opinion of the Court was, That the Information being exhibited for the Loan of

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Money,

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Money, that the Evidence was not pursuing nor leading to the Issue. And yet the Jury, against the Opinion of the Court, upon that Evidence found the Defendant guilty.

And it was moved in Arrest of Judgment, that the Evidence did not maintain the Information, nor prove the Issue *ex parte querentis*; and it was said, there are three Things within the Statute, *i. e.* three Words,

(1) Bargain, (2) Loan, and (3) Chervifance; and these three are several Things, and therefore, if the Information be conceived upon Loan, and the Informer gives in Evidence a corrupt Bargain for Cloth, as it is in this Case, the same does not maintain the Information; so if the Information be granted upon usurious Contract by way of Mortgage, and gives in Evidence an usurious Loan *ut supra*. But if the Information had been conceived generally, upon an usurious Agreement, and gives in Evidence a Loan, the same is good enough, for every Loan is an Agreement. *Manwood*: There cannot be any Loan without Bargain, nor any Forbearing without Bargain; for he contracts

contracts or bargains to do it, *viz.* to lend, or forbear. Bargain of Forbearing is, where the first Day of Payment is not kept, and the Parties have agreed for a further Day for the Payment, &c. And it appears in this Case, that it was a Bargain to forbear a Sum of Money which should have been paid before; and the Information here is upon a Bargain by way of Loan, which was a Bargain for forbearing. *Fuller*: This Word *Bargain* in the Statute cannot be intended a Bargain for Wares or such Things, and so distinct from the other two Things, &c. If in Information upon Loan an usurious Contract had been given in Evidence, that would not maintain the Information. And it was moved in this Case, if the Time of the Loan or Forbearance of the Money shall be accounted according to twenty-eight Days to every Month, or by the Months in the Kalendar, *viz.* *January, February, &c.* And it seemed to some according to the Days, as in Case of the Statute of 23 *Eliz.* of Recusants; and others conceiv'd contrary in both Cases. And *Fuller* said, That



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That in the Case of Policy of Assurance, made to warrant a Ship, one was bound to warrant a Ship for twelve Months; and it did not perish within the twelve Months, being accounted according to twenty eight Days; but being accounted by the Kalendar, as *January, February, &c.* it perished, &c. and it was said and holden, That he had not forfeited his Bond. *Gent, Baron: If I lend one 100*l.* without any Contract for Interest, and afterwards at the End of the Year he gives me 20*l.* for the Loan thereof, the same is within the Statute; for my Acceptance makes the Offence, without any Bargain or Contract. And by *Clarke, Baron, The Place where the Defendant accepted excessive Interest ought to be shewed in the Information, but not the Place where the Contract for the Loan or Forbearance was made, for the same is not needful. See the Case between Strading and Morgan, Plowd. 200,* for the setting down of the Place in the Declaration, where the Extortion was committed. The Information here is by way of corrupt Bargain and*

and Loan. The Defendant took at *Dertford* such a Sum, where the Taking is laid *apud Dertford*, but no Place of the corrupt Bargain, or of the Loan. And by *Gent*, If I lend *Beesie* for a Year, and afterwards he takes further Forbearance of another Year beyond the Rate, the same is within the Statute: But in all Cases, the Place where the corrupt Bargain was made ought to be certainly alledged. *Manwood*, Baron: The Information is not good for the Incertainty of the Place, where the corrupt Bargain was made; and although there are many Precedents on the Informer's Part, it is not to the Purpose, for they were admitted without Exception, and then they passed *sub silentio*, and so of no Force. There are three Things, or rather Degrees of Offences within the Statute. In Usury, within the Statute, there ought to be corrupt Loan, Chevifance, or Shift; 1<sup>st</sup>, Corruption. 2<sup>d</sup>, He ought to take more than 100 *l.* 3<sup>d</sup>, It ought to be for lending or forbearing. There was a Case in this Court in the Time of this Queen, that the Defendant had taken more than 10 *l.* in the 100 *l.* but in the Information

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formation no Corruption in the Bargain was alledged; and therefore Judgment was given against the Informer: But in the Case at Bar Corruption is set forth *in fact*, and therefore as to that the Information is good enough: As to the Forbearance and giving of Days of Payment, the same is alledged in the Information, but not according to the Statute, for the Statute is in the Disjunctive, but the Information is in the Copulative: Here in our Case the Issue is Not guilty, under which several Issue all the Points of the Statute are included, and ought to be tried: As to the Corruption, the same is not sufficiently laid, for no Place is assigned where the corrupt Bargain was made; *ergo* no *Visue*, for it to be tried; *ergo* no Trial; *ergo* no Issue for it; *ergo* this Point of the Statute doth not come in Issue, nor can it be tried upon the General Issue, Not guilty. Also he held, That all the Offence ought to be within the Year; for if one makes a corrupt Bargain for this Year, and ten Years after he takes excessive Usury, the same is not within the

the Statute to inform upon it. And in Truth, there is no such Offence without corrupt Bargain, so as he conceived: That the Word *Lending* is a strange Word, but where the Statute is Forbearing, or giving Day of Payment, and in the Information it is giving and forbearing in the Compulative, that is good enough, for the one Word enforceth the other, and is not double. Also the Information hath not shewed whose Money it is, and therefore is not good: And afterwards Judgment was given against the Informer; and a Writ of Error thereupon brought in the *Exchequer-Chamber*. And it was argued by *Popbam*, Attorney General, That Judgment ought to have been given for the Queen and the Informer; for the shewing of the Place where the corrupt Bargain was made, needs not to be alledged in the Information; for the Offence punishable by the Statute is the Receipt of excessive Usury, and not the Contract. And it was the Case of one *Bird*, 20 *Eliz.* where the Plaintiff shewed the Place of the Receipt and not of the Contract, and yet

yet had Judgment for the Queen, without any Exception to it before Judgment, or Error after; for the Contract is but Inducement to the Receipt, and it shall be tried where the Taking was; therefore it is not necessary to shew the Place of the Bargain: And it was adjourned. *Sir Wollaston Dixie's Case, Mich. 29 Eliz. in the Exchequer, 1 Leon. 95.*

13. An Information upon the Statute of Usury, for a Contract with Persons unknown, *recipiendo ultra 10 l. per Cent.* (1.) That was held ill (because with Persons unknown,) Case of an Indictment, *pro morte hominis ignoti.* (2.) That an Informer who is not Party, altho' the Contract was *ultra 10 l. &c. per Cent.* shall not have any Benefit, unless there was a Receipt of the Usury according to the Contract, and for that the *Recipiendo* is naught, because there no Placet nor Time put of the Receipt, which is now traversable in that Information. *Nashe's Case, 2 Jac. C. B. Nov 143.*

14. If an Action of Debt at the Common Law, upon the Statutes of Usury of 13 *Eliz. c. 8,* and 31 *Eliz.*

Injunction.

c. 10.



c. 10, the Defendant pleads the General Issue, which was found against him, and so Judgment to be given against him: A Day was given by the Court to the Defendant, to move in Arrest of Judgment, if he had any legal Matter to move to stay Judgment. In the Interim, the Defendant goes into *Chancery*, prefers his Bill there, and there procures an Injunction to stay Judgment and Execution here: But notwithstanding this Injunction the Court here proceeded, and granted Judgment and Execution. *Coke Ch. Justice.* Look into the *Statutes at Large* of 27 *E. 3. c. 1. Rastal, fol. 326,* and of 4 *H. 4. c. 23. Rastal, fol. 226.* against such Proceedings to stay and hinder Judgments and Executions; and it is much to be wondered, that none will inform upon these Laws in such Cases against the Party that procures such Injunctions after Judgments at the Common Law, or to stay Judgments and Executions after Trials had; for that by the same Statutes, be it in a Plea real or personal, after Judgment given, the Party ought to be quiet and to submit unto it; for that Judgments being once given

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given in *Curia Domini Regis*, are not to be reversed nor avoided but by a Legal Course, *per errorem* or *per attinctam*; and so by the Rule of the Court in this Case Judgment and Execution was granted. *Heatb* against *Ridley*, Defendant, *Hil. 11 Jac. 2 Bult.* 194.

Trial.

15. In an Action of Debt upon a Bond made at S. the Defendant pleaded, that the same was made upon a corrupt Contract made at another Place, and so to avoid Payment of the Money due by the said Bond, upon the Statute of 13 *Eliz. c. 8.* The Plaintiff reply'd, That it was made *bona fide*, and takes a Traverse, *absque hoc*, that the same was entered into upon a corrupt Contract. Hereupon they were at Issue; the *Venire Facias* for a Jury to try the same awarded from the Place where the corrupt Contract was said to be. Upon the Trial a Verdict was found for the Plaintiff. It was moved for the Defendant in Arrest of Judgment, that the *Venire Facias* was not well awarded, for that the Trial should have been by a Jury from both Places, where the Bond was sealed, and from the Place where the corrupt  
Con-

Contract was said to be: But by the Opinion of the whole Court, clearly the Trial being by a Jury from that Place only where the corrupt Agreement is said to be, is a good Trial, and as the same ought to be, and the same not to be from both Places; and so the *Venire Facias* well awarded.

*Williams*, Justice: If two Men are bound to one jointly and severally, if he sues one of them upon this Obligation, said to be at one Place, and sues the other also upon the same Bond, supposed to be made at another Place; this is good, and he may so declare against them severally: And in this principal Case it is clear, That the Trial ought to be, as here it is, by a Jury from that Place where the usurious Contract is laid and supposed to be. Also if one declares upon a Bond made at *Westminster*; the Defendant alledged that the same was made by Durels at another Place; the Trial here shall be by a Jury from that Place where the Durels is laid to be; and so in this principal Case the Court was clear of Opinion, that the Trial ought to be by a Jury from that Place only where

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where the corrupt Agreement was laid to be; and the Trial being had in this Manner, was good, and the *Venire Facias* well awarded: And so by the Rule of the Court, according to the Verdict, Judgment was entered for the Plaintiff. *Stanton against Barton, Mich. Term 10 Jac. 2. Bull. 34.*

## S E C T. XXIII.

## A Summary of the foregoing Sessions, with Remarks.

AS the foregoing Sections contain all the Acts of Parliament or Abridgments of them, which any ways concern Pawn-Brokers and Usurers; and likewise all the Common Law Cases and Resolutions dispersed in the Multitude of Reports and other Books extant, which are disposed under their proper Heads; but the Cases being for the most part very fully stated, with the Arguments on both Sides, and the Determinations of the Courts, which must certainly be the more satisfactory to the judicious Reader than short Abridgments, and yet may be too tedious and perplexing

to such Readers who are less acquainted with the Law and the Terms thereof; for whose Use therefore this Section contains a Summary, of the Substance of what is before me at large, with Remarks for the better Understanding thereof; and References are also made to the foregoing Pages, that the Reader may easily find where any particular Point is more fully treated, and be satisfied as to the Authorities in Law to warrant what is hereafter repeated.

I. *As to Pawn-Brokers and Pawns.*

A Pledge or Pawn is where Goods What a and Chattels are delivered in Security Pledge or for Money lent. a Pawn is.

A Pawn-Broker is he who lendeth Who a Money; (1.) He is more properly Pawn-broker called a Pawn-taker or Fripperer. Broker is.

Page 16, 17.

If a Man who has pawned Goods What In-attainted of Felony, (*that is, has Interest or Judgment passed upon him for Felony*) yet the King shall not have the Things Goods so pawned (*as a Forfeiture for pawned. the Felony*) without paying the Pawn-broker the Money which he lent, because neither he who pawned the Goods,



## A Summary, with Remarks,

Goods, nor the Pawn-Broker, has an absolute Property in them. Page

3, 4.

*And tho' in this Case the Interest is not mentioned, yet undoubtedly the King must pay it as well as the Principal.*

The absolute Property of the Goods pawned of one who is afterwards outlawed, is in the King till the Outlawry is reversed. See of Redemption hereafter.

Sir John Ratcliff pawned a Hatband set with Pearls and Diamonds to John Whitlock for 25 *l.* but no certain Time was appointed for redeeming it; afterwards Whitlock being sick, his Wife in his Presence, and with his Consent, delivered it to one Davies; Whitlock died, having made his Wife Executrix, who proved his Will; Sir John tendred the 25 *l.* (and it is to be supposed the Interest too) to the Executrix, who refused, and afterwards demanded the Hatband of the said Davies, who refused to deliver it; therefore against him Sir John brought an Action of Trover and Conversion: Upon which it was resolved *v.* That Sir John might reckon the Goods after Whitlock's Death; for Pledging does not make

an absolute Property, it is only a Delivery till Payment; so it is a Debt due to the one, and a Retainer of the Thing to the other; for which there may be a Re-demand at any Time upon paying the Money, for the Pledge delivered is but as Security for the Money lent, so as the Borrower is to have his Pledge again when he repays the Money, and his Tender gives him Interest therein. A Mortgagee of Land has an absolute Interest therein, but a Pawnee has but a special Property in the Goods to detain them for his Security.

2dly, That by the Delivery of the See of re-  
Hatband by the Wife, with the Hus-  
band's Consent, to the Defendant, <sup>Things</sup> delivered  
there passed no Interest therein to the over here-  
Defendant, but (as it were) a Custo-  
dy only; therefore the Tender of  
the Redemption ought to be made to  
the Executrix and not to the Defen-  
dant.

3dly, That the Tender to the Exe-  
cutrix, and her Refusal, was as good  
as Payment, and the special Proper-  
ty of the Husband is reverted in the  
Plaintiff: Then when he demanded  
it of the Defendant, and he refused  
to deliver it, but converted it to his  
own

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own Use, a Trover and Conversion well lies, altho' the Defendant came to the Hatband by a lawful Delivery, and not by Trover; wherefore it was adjudged for the Plaintiff. *Page 4, 5.*

A Pawn-Broker has a special Property in Things pawned, *Page 6, 7, 3, 2,* tho' they be not delivered to him at the same Time the Money was lent; for several Examples thereof see *Pages 6 and 7.*

The general Property continues in the first Owner. *Page 32.*

A Pawn-Broker has such an Interest in Things pawned, that they shall not be taken in Execution at the Suit of another Creditor till the Money for which they were pawned (*and undoubtedly the Interest*) be first paid. *Page 8, 11.*

If a Person promised a Pawn-Broker, that if he would deliver the Goods pawned he would pay the Money, that is a good Consideration, and an Action on that Promise lies against him, for the Broker has a special Property in the Goods. *Page 9.*

*But now this seems not a good Consideration, for by the Statute of Frauds and Perjuries, 29 Car. 2. c. 3. it is enacted that no Action shall be brought*

whereby to charge the Defendant, upon any special Promise, to answer for the Debt or Default of another, unless such Agreement, or some Note or Memorandum thereof be made in Writing, and signed by the Party chargeable therewith, or by some other Person by him authorized.

A Pawn-Broker has such an Interest in a Thing pawned, that he may assign it to another Person, (*Page 10, 12.*) and such Person may have an Action of Detinue (*or, I apprehend, Trover*) if he detains it upon Payment of the Money by the Owner.

*Page 10.*

On such Assignment the Tender must be to the Assignee. *Page 12.*

But a Person cannot grant a Thing as a Pawn, which is not in his Possession, though he has a Right to it, for a naked Right is not transferrable over. *Page 13.*

No Sale, Exchange, Pawn or Mortgage of Jewels, Plate, Apparel, Household-Stuff, or other Goods wrongfully gotten, which shall be sold, pawned, &c. in London, Westminster, or Southwark, or within two Miles of London, to any Broker or Pawn-taker, shall alter the Property or Interest of the

H Person

Person from whom they were wrongfully gotten. (Page 18.) And if the Person from whom they are wrongfully gotten, shall require of such Broker or Pawn-taker to declare whether such Goods be come to his Hands, and to declare, shew and manifest the same, and how he came by them, and how, when, and to whom he has delivered, conveyed, or bestowed and employed the same; and such Broker, upon Refusal thereof, shall forfeit to the Owner double the Value of such Things he denies to manifest as aforesaid, to be recovered by Action, &c. Page 19, 20.

In what Manner Things pawn'd may be used by him they are pawned to.

He who has a Pawn, has such a special Property in it, that (*if it requires Charge in Keeping*, p. 22.) he may work it; if it be a Horse or Ox, (*he may ride the Horse*, &c. p. 20.) or may take the Cow's Milk, and may use it in such Manner as the Owner would; but if he misuses it, an Action lies. Page 10. This Liberty of using a Pawn is in Recompence for the Keeping. Page 22.

When a Man has a special Interest in any Thing by Act in Law, he cannot work, or otherwise use it; but it is otherwise upon a special Interest by



by the Act of the Party, as in Case of a Pawn. *Page 11, 21.*

If a Pawn-Broker uses such Goods pawn'd to him, as are worse by Usage, an Action on the Case lies against him; but not of Goods that are not worse for Usage. *Page 12.* As Jewels, &c. those he may use, but it must be at his Peril; for if he is robbed in Wearing them, he is answerable, for the Using occasioned the Loss: But if the Pawn is laid up, and the Pawn-Broker is robbed, he is not answerable. *Page 21.*

Where no Time is appointed for When Redemption, it may be after the Goods pawned Death of him to whom it was pledged, may be *Page 4, 12, 25.* but not after the Death redeemed, of him who pledged it, *Page 4, 25.* and when for it is a Condition personal, and his fold.

Executor cannot redeem it. *Page 25.* Pledging does not make an absolute Property, it is only a Delivery till Payment: So it is a Debt due to the one, and a Retainer of the Thing to the other; for which there may be a Re-demand at any Time, upon Payment of the Money; for the Pledge delivered is but as Security for the Money lent, so as the Borrower is

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**A Summary, with Remarks.**

to have his Pledge again, when he repays the Money. *Page 5.*

When a Pawn is redeemable at a certain Day, and not then redeemed, the Pawn-Broker may sell it, for then he has an absolute Property; but still the right Owner has his Redemption in Equity. *Page 22, 25, 26.*

Exchequer Annuities.

Exchequer-Annuities pawned, and transferred as Security, but with a Defeasance on Payment of the Money, may be sold, without a Decree of Foreclosure. *Page 22 to 25.*

Outlaw.

If a Man pawns Goods, and is afterwards outlawed, he cannot redeem them, for the absolute Property is in the King; but if the Outlawry be reversed, then he is reinstated in his Property, and may redeem them. *Page 26.*

Notes.

Of redeeming Goods where a Note was given by the Pawn-Broker, acknowledged the Goods in his Hands for securing the Money borrowed, and afterwards more Money borrowed on other Notes, not mentioning the Goods. See *Page 26.*

Writings.

And of redeeming Writings, deposited as Security for Money borrowed, and Part of a Portion unpaid. See *Page 27 to 31.*

As

As to Goods being delivered on Sale of lending Money, that he who lent Goods. the Money might sell the Goods, to satisfy himself, &c. See *Page 51.*

If a Person who takes a Pawn Of re-delivers it over to a Stranger, and dies, deeming a Tender of the Money must be to Pawns delivered by his Executor, and not to the Stranger; the Pawn-for the Delivery is but a naked Cu-Broker to stody of it: And if the Delivery had another Person. been on Condition, it does not alter the Case; for the Stranger is not privy to the first Contract of Pawning, nor to the Condition, and so not like to a Mortgage. *Page 31,*

32. *Demainbray* pawned Jewels to *Knight* for 100 *l.* which by a Writing signed were to be redeemed in twelve Months: *Knight* soon after pawned the Jewels, and some Plate of his own, to *Metcalfe*, for 200 *l.* and afterwards borrowed Money of him on Promissory Notes payable on Demand. *Demainbray* brought a Bill in Chancery to redeem his Jewels from *Metcalfe*; who by his Answer insisted, that though he took the Notes on Demand, it was then agreed that the Pawn should remain as Security for the Sums lent on them, as

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## A Summary, with Remarks.

well as for the Money before lent. But no Person was then present, therefore he could not prove the Agreement. But the Lord Chancellor said, it was natural to suppose, that though *Metcalfe* took the said Notes, yet his having a Pawn in his Hands of greater Value, might induce him to lend, and that the Pawn was not to be parted with until the Money on the Notes, as well as what was before lent, was paid; and looked upon it as an Account current between *K.* and *M.* therefore he might retain what he had in his Hands till the Balance paid; and thereupon decreed a Redemption to *Demainbray* of his Jewels, upon Payment of all that was due to *Metcalfe* on the Notes and Pawns; but the Goods of *Knight* which were pawned, were to be first applied, as far as the Value would extend. Page 32, 33, 34.

Of re-deeming Goods which are pawn'd by one who is not the right Owner. If a Man finds another Man's Goods, and pledges them for Money, the Owner may retake them. Page 34.

Q. *If he must not pay the Money lent, is not the and legal Interest?*

A Bill in Chancery was brought by a Clothier against a Pawn-Broker, to

to discover whether his Factor had pawned his Cloth; but the Pawn-Broker by his Answer not admitting it to be the Plaintiff's, the Court on Motion ordered that the Defendant should let the Plaintiff, with two or more Persons present, have a Sight of the Cloth, that the Plaintiff should be thereby enabled to bring an Action at Law. *Page 34, 35.*

But see before, as to pawning Goods wrongfully gotten.

For the Punishment of Silk-winders Silk-Warpers, &c. who pawn the Silk delivered to them by the Silk-Throwers, and of the Persons receiving, &c. such Silk. See *Page 35 to 40.*

And for the Punishment of Journey-men Shoemakers within the Bills of Mortality, for selling, exchanging, or pawning Boots, Shoes, &c. and of the Pawn-Brokers for taking in such Pawns, &c. See *Page 40 to 47.*

If a Man pawns Things of a perishable Nature, as Oil, Corn, &c. pawned, and there is no Time of Redemption being lost, limited, he must bear the Loss if they are stolen, or damaged. perish naturally, and the Person to whom they are pawned may have an Action for his Money. *Page 48.*

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## A Summary, with Remarks.

If a Creditor takes a Pawn, he must restore it on Payment of the Debt; but if his Care in keeping it be exact, and the Pawn is lost, he shall be excused, for there is no Default in him. *Page 48.*

And in case the Pawn be lost, the Pawn-Broker has still his Remedy for the Money against the Person who pawned the Goods, for the Law requires nothing extraordinary of the Pawn-Broker, but only that he shall use an ordinary Care for restoring the Goods. *Page 48, 49.*

If a Pawn-Broker is robbed in wearing Things pawned, he is answerable; but if a Pawn is laid up, and the Pawn-Broker is robbed before Tender of the Money, he is not answerable, unless there be a Default in him: If after Tender the Broker keeps the Goods, and they are stolen, he must answer, for now his Property is determined, and he is a wrongful Detainer; and he that keeps Goods by Wrong, must answer for them at his Peril in all Events, for his Detainer is the Reason of the Loss. *Page 49.*

Trover

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Trover and Conversion, Not guilty Of Actions pleaded, and a special Verdict found, concerning Pawn- adjudged for the Plaintiff. See Brokers. Page 4.

*Assumpsit* by a third Person, on Delivery of a Pawn. Demurrer to Declaration: Judgment for the Plaintiff. Page 8 to 12.

To misuse a Pawn, an Action lies. Page 10.

Detinue lies against the Assignee of a Pawn-Broker, after Payment of the Money borrowed, and Refusal. Page 10.

Action against Pawn-Brokers, for not declaring what Goods purloined, &c. have not come to their Hands. Page 19, 20.

Bills in Equity concerning Pawns. Page 22, 27, 32, 34.

A Motion in Chancery, after Answer to have a Sight of Cloths pawned, to enable the Plaintiffs to bring an Action. Page 34, 35.

Information in the Exchequer against one who had taken one of the King's Jewels in Pawn, to which the Custom of *London* was pleaded, which was adjudged to be bad, and the King was ordered to be restored. Page 49, 50.

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To

## A Summary, with Remarks.

To an Action of Debt for Money lent, in what Cases a Pledge for the Money may be pleaded. *Page 51.*

Action of Debt for Part of the Money lent, where the other Part was satisfied by the Plaintiff's selling Goods delivered to him, pursuant to Agreement when the Money was lent. *Page 51, 52.*

In an Action of Trespafs for taking Goods, the Defendant pleaded he took it by his Leave as a Pledge. *Q. If a good Plea? Page 52, 53.*

Whether an Indictment will lie against a Pawn-Broker for refusing to deliver Goods pawned, after Tender of the Money lent and Interest. See *Page 54, 55, 56.*

Trover against a Pawn-Broker, for his Servants refusing to deliver Goods pawned. *Page 56.*

On an Information against a Pawn-Broker, on the Statute of Usury, for receiving corruptly by way of Loan 42 s. for the Forbearance of 25 l. from *July 29 to May 30*, Judgment was given that the Broker should forfeit treble the Sum lent; for tho' there be no Contract before nor during the Continuance of the Money, the Payment afterwards is not Usury; but

but in this Case, a Pawn being given, and the Broker refusing Delivery, unless so much more were paid, it is Usury. Page 73, 74.

2. *As to Usurers and Usury.*

Usury, in a legal Sense, is a Gain Usury, over and above the Principal of that which was lent, and lawful Interest. Page 57. See Page 77.

No Person upon any Contract shall take for the Loan of Money, Wares, Merchandizes, or other Commodities whatsoever, above 5 *l.* for the Forbearance of 100 *l.* for a Year, and so after that Rate for a greater or lesser Sum, or for a longer or shorter Time. Page 63.

All Bonds, Contracts and Assurances, for Payment of any Principal, or Money to be lent or covenanted to be performed upon or for any Usury, whereupon or whereby there shall be received or taken above 5 *l.* per Cent. shall be void. Page 64.

And all Persons who shall, upon any Contract, take, by way or means of any corrupt Bargain, Loan, Exchange, Chevizance, Shift, or Interest of any Wares, Merchandize, or other Things,

(1.) Statutes of Usury.  
*Loan of Money.*

*Usurious Contract.*

## A Summary, with Remarks.

Things, or by any deceitful Ways or Means, or by any Covin, Engine, or deceitful Conveyance, for the forbearing or giving Day of Payment for one whole Year, of and for their Money, or other Thing above 5 *l. per Cent.* shall forfeit for every Offence the treble Value of the Monies, Wares and Merchandize, and other Things so lent, bargained, exchanged or shifted. *Page 64.*

*Of procuring the Loan of Money.*

And every Scrivener, Broker and Solicitor, and Driver of Bargains for Contracts, who shall take any Sum or Reward for Brokerage, Soliciting, Driving or Procuring the Loan, or Forbearing of any Sum of Money above the Rate or Value of 5 *s.* for the Loan, or Forbearing of 100 *l.* for a Year, and so rateably, or above 12 *d.*

*Making the Bond.*

over and above the Stamp-Duties, for making or renewing of the Bond or Bill of Loan, or forbearing thereof, or for any Counterbond or Bill concerning the same, shall forfeit for every such Offence 20 *l.* with Costs of Suit, and suffer Half a Year's Imprisonment. *Page 61, 65.*

But the *Bank* may borrow Money at such Interest as they think fit. And so may the *South-Sea Company*:  
But



But not for less than six Months Time.

Page 66.

Persons in Partnership (except the Bottomry. Assurance Corporations) lending Money by way of Bottomry, the Security is void, the Agreement is usurious, and the Offenders shall suffer as in Cases of Usury. Page 66,

67.

The Courts of Sessions, and Justices (2.) of Peace, have not Jurisdiction of What Courts have Jurisdiction

Usury. Page 67, 68.

Nor the Court of *Ely*. Page 67.

But only the Courts of *Westminster*. of Usury. Page 67.

If a Man lends Money, and contracts for more than legal Interest, the Bond made for it is void presently. Page 69.

An usurious Contract, made after a Bond for the Payment of Money at Day certain is forfeited, does not make void the Bond that was good at first, but it subjects the Taker to other Penalties. Page 69, 70.

Where a Man lends 100*l.* for a Year on a Bond, and is to have 5*l.* for the Use of it, if the Borrower pays the 5*l.* before it is due, that does not make the Bond void, because it was not corrupt: But if upon making

making the Bond it was agreed that the 5 *l.* should be paid within the Time, that would be Usury, because he would not have the 100 *l.* for the whole Year, when the 5 *l.* was to be paid within the Year. *Page 70.*

Where an usurious Contract is affirmed. If one contracts to have 20 *l.* for the Loan of 100 *l.* and he takes none of the 20 *l.* he is not punishable by the Statute; but if he takes but 1 *s.* this is an Affirmance of the Contract, and he shall render for the whole Contract. *Page 81.*

If I covenant to pay 100 *l.* a Year hence, and if I don't pay it, to pay 20 *l.* it is not usurious, but only in Nature of a *Nomine Penæ*, that is, in the Name of a Penalty. *Page 85.*

Of receiving more than legal Interest, where no Agreement was made on lending the Principal. Where Money is lent for a certain Time, and when the Time of Payment is come, he who lent the Money takes more than legal Interest; now if an Action is grounded on the Loan (*or the lending the Money*) a corrupt Agreement must be at the making the Contract, and not at the End of the Term: But this being grounded on the Receipt, the corrupt Receipt is sufficient; but not unless the Money (*that is, the Principal*) be continued (*in the Hands of the*

### A Summary, with Remarks.

*the Borrower*) or the Bond be refused to be delivered up without such illegal Interest. *Page 71, 72.*

To avoid a Security by reason of Usury, the Contract itself must be usurious; for if the Party afterwards takes more than is allowed, that will not make it so: So that if the Agreement of the Parties be honest, but made otherwise by the Mistake of the Scrivener, yet 'tis not Usury. *Page 72. where you may see an Example.*

Whether a corrupt Agreement, to take Interest for Time past, be within the Statute of Usury. See *Page 72, 73.*

Where Part of the Time of the Forbearance of Money is before corrupt Agreement, and Part after, it is usurious. *Page 73, 74.*

Where there is no Contract before, nor during the Continuance of the Money, the Payment afterwards is not Usury; but a Pawn being given, and the Broker refusing to deliver it, unless so much more be paid, it is Usury, and the Broker is liable to pay treble the Value of the Money lent. *Page 74.*

In an Action of Debt on a Bond, the Defendant pleaded the Statute of Usury.

## A Summary, with Remarks.

Usury. Upon Evidence it appeared that the Plaintiff's Wife used to lend Money to be paid by the Week, and that she lent to the Defendant 20*l.* to be paid by 20*s.* a Week, and 1*s.* 6*d.* a Week Interest; and that the Defendant paid the Interest to the Wife, which amounted to 30*s.* at the same Time the Money was lent. This was adjudged an usurious Contract by the Husband, (*the Plaintiff*) sufficient to make the Bond (*or other Deed*) void *civilly*, (*that is, subjecting him to the Payment of the Money forfeited*) tho' (*this Act of the Wife is*) not sufficient to charge the Husband *criminally* (*that is, so as he should suffer any corporal Punishment*). Page 74, 75.

Of Contracts to pay Money at a certain Time, if Persons be then alive.

A Covenant, in Consideration of 100*l.* to pay 80*l.* apiece to such of the Children of G. (who had then five) as should be alive at the End of Time, if ten Years, is not usurious; for it is a mere casual Bargain, and a great Hazard but that in ten Years all the Children, or some of them, will be dead; and if one be dead, he saves 80*l.* But an Agreement to pay 300*l.* at the End of one or two Years, if any of the Children were alive, is usurious,

usurious, for in Probability one of them would continue alive for so short a Time. *Page 75, 76.*

An Agreement to pay *W. 10 l.* for the Forbearance of *20 l.* for a Year, if *A.* his Son be then alive, is usurious. *Page 92, 93.*

*R.* lends *C. 60 l.* (on a Bond) for six Months, who is to pay for the Principal and Loan *33 l.* at the End of the six Months, if *R.*'s Son be then alive; and if he dies before that Day, *C.* shall pay but *27 l.* which is *3 l.* less than the Principal: This is an usurious Contract, within the Statute. *Page 76.*

A Contract to pay the Principal Money, and above Common Interest, after three Months, if *J. S.* should so long live; but if *J. S.* dies within the three Months, that the whole should be lost. *Page 77.*

A Bond of *600 l.* with Condition that the Obligee lent *300 l.* on an Adventure: If therefore the Obligee at the End of three Months should pay *22 l.* Premium, and the *300 l.* Principal, or *6 d.* for every Pound per Month Premium, or if the Obligor should die within six Months, then the Bond to be void. *Page 79.*

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## A Summary, with Remarks.

Of accept-  
ing Goods  
for the  
Loan of  
Money.

P. sold S. two Oxen 22 *June*, for 6 *l.* 6 *s.* 8 *d.* to be paid at *All Saints* next. S. on the same Day required a longer Day, and P. gave him till the 1st of *May*, paying him three Quarters of Wheat, which was above the Value of legal Interest. The first Contract is good, being made *bona fide*; and tho' the last is usurious, it does not avoid the first. *Page 80.*

Of Bro-  
kerage and  
Bottomry.

The Plaintiff lent the Defendant 10 *l.* and if the Ship returns, to pay 3 *l.* this is good, and bare Bottomry. *Page 81, 82.*

Agreement that 7 *S.* on 21 *l.* lent, should pay to such Persons as the Plaintiff should name 30 *l.* at the End of six Months, if the Ship returned, and did not go forth, and the Defendant should have a certain Sum. The Jury found this Usury, and the Court will presume it. Had it been found specially, it had been no Usury. *Page 82, 83.*

A Bond to pay so much within sixty Days after the Return of a Ship, or at the End of thirty-six Months, which shall first happen, according to Articles of Bottomry. And tho' it appeared to be 19 *l.* 10 *s.* *per Cent.* and no Hazard of the Principal, yet this

this was adjudged not usurious, because it did not appear to be for Money lent or borrowed. *Page 84.*

A Bond for Payment of 130*l.* when a Ship should return from beyond Sea. The Money lent was only 50*l.* yet not usurious. *Page 85.*

See concerning an Action brought for 600*l.* for procuring Money to be lent to the King. *Page 85.*

If *A.* owes *B.* 100*l.* who demands his Money; *A.* says he has it not ready, but will pay it if *B.* can procure it to be lent by any other Person. *B.* having Occasion for it, contracts with *C.* that if he will lend *A.* 100*l.* he will give him 10*l.* Thereupon *C.* lends the Money, and the Debt is paid to *B.* This is a legal Contract between *B.* and *C.* for *B.* has Benefit by it. *Page 87.*

Every Contract made about any Thing prohibited and made unlawful by any Statute, is a void Contract, tho' the Statute itself does not mention that it shall be so, but only inflicts a Penalty on the Offenders; because a Penalty implies a Prohibition, tho' there are no prohibitory Words in the Statute; (*Page 87.*) As if a Scrivener contracts for more than

than 5 s. for procuring the Loan of 100 *l.* such Contract is void. Page 88.

Of Sureties for others, and Counter-bonds on usurious Contracts.

*W.* was indebted to *A.* in 100 *l.* and agreed for the Forbearance of a Year to give him 30 *l.* and made a Bond for 60 *l.* for the Payment of the 30 *l.* and for the Payment of the 100 *l.* Principal, he and *A.* gave a Bond to *E.* of 200 *l.* *A.* being indebted to *E.* in 100 *l.* and *E.* knowing nothing of any corrupt Agreement between *W.* and *A.* *E.* brings an Action against *W.* upon the Bond of 200 *l.* who pleads the Statute of Usury. But it was adjudged for the Plaintiff. Page 88, 89, 90, 91.

It has been a Question whether the Defendant, in an Action of Debt upon a Bond of Indemnity, from being Surety for the Payment of Money on an usurious Bond, can plead the Statute of Usury?

And in *Potkin's Case*, 19 *Eliz.* in the King's Bench, it is held a good Plea in Bar of the Action; for when the Plaintiff was sued upon the Principal Bond, he might have discharged himself upon this Matter; and therefore his Laches (that is, *his Neglect*) shall turn to his Prejudice. And

And therefore the Issue was joined upon the excessive Usury. Page 93, 94.

But on the contrary in *Basset* and *Provie's* Case, 26 *Eliz.* K. B. *Wray* Chief Justice held it no Plea, for the Statute is, That all Bonds and Collateral Assurances, made for the Payment of Money lent upon Usury, shall be utterly void; but the Bond upon which the Action is brought, was not for the Payment of the Money lent, but for the Indemnity of the Surety. Page 91, 92. And in *Button* and *Downham's* Case, 40 *Eliz.* C. P. it is held by *Anderson*, *Walmesley* and *Owen*, Judges, (*Glarville* absent) that as the Condition is to save harmless from all Suits, which the Defendant has not done, nor does he answer thereto, but to the (first) Bond only, the Plea is ill; for altho' the first Bond be void, yet the second is forfeited, because the Defendant has not saved him harmless from Suits concerning it. Page 92, 93. And in *Robinson* and *May's* Case, *Mich.* 39 & 40 *Eliz.* K. B. all the Court held it to be no Plea, for he ought to take heed to save his Surety harmless: Wherefore it was adjudged for the Plaintiff. To

## A Summary, with Remarks.

To which Croke (*the Reporter*) adds this Note: The Reason conceived; for that the Surety by Intendment cannot know of the corrupt Contract to plead in Avoidance of the Bond, wherefore the Principal ought to take Care thereof. Page 94, 95.

Of usufructs concerning Rents, Leases, Mortgages and Purchases. B. had a Lease from S. for forty Years, at 5 *l. per Ann.* and agreed to assign it to D. for 300 *l.* who not having the Money, T. by Agreement with D. paid the 300 *l.* and took the Assignment to himself; then T. let the House to D. for thirty-nine Years three Quarters, at 35 *l. per Annum*, of which 5 *l.* was to be paid to S. and the remaining 30 *l.* to T. for his own Use. D. covenanted to pay the Rent, &c. and T. covenanted, that if at the End of four Years D. paid the 300 *l.* then the Rent should cease, and he would convey the Residue of the Term to D. This is not Usury, for D. was at his Election whether he would pay the 300 *l.* to T. Page 95, 96, 97.

C. borrowed of M. 150 *l.* and for Security leased a Close to M. for sixty Years, to commence at the End of two Years, upon Condition that if he paid the 150 *l.* at the End of two Years,



Years, that the Lease should be void: And it was agreed that C. for deferring and giving Day of Payment for two Years, should pay to M. for Interest yearly 22 *l.* 10 *s.* by Quarterly Payments, if M. should live so long. This is an usurious Contract.

Page 97, 98, 99, 100, 101.

S. lent G. 120 *l.* for a Year, who was to pay 12 *l.* for the Interest, and on May 23. gave a Bond of 260 *l.* conditioned for the Payment of 132 *l.* on May the 24th next ensuing; and for the better Assurance assigned a Lease, upon Condition to be void on paying the 132 *l.* at the Day in the Condition of the Bond. The Words *May next ensuing* is intended the same Month, and not the next *May*: But as this was a Mistake of the Scrivener, the Matter being found by a Special Verdict, that the Money was lent for a Year, the Agreement was not corrupt, as the Payment was not required until after the Year. So it was adjudged that it was not Usury, nor was the Assurance made void by the Statute. Page 101, 102, 103, 104, 105.

Note; *This was before the Statute for reducing Interest to 5 l. per Cent.* for

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for now 12 l. for 120 l. for a Year  
would be Usury.

By Agreement *A.* lent *T.* 100 l. who granted to him and his Heirs a yearly Rent of 20 l. on Condition, that if *T.* paid *A.* 100 l. at a certain Day, which was above a Year and a Quarter after the Grant, the Rent should cease. This is not Usury, for nothing was to be paid by *T.* the Grantor till after the said Time; and if he had paid the Money at the Day, the Rent would have ceased, without paying any Thing for the said 100 l. Page 105 to 108.

Where one mortgaged Land for 100 l. and took a Bond for the legal Interest, payable Half-yearly, this was deemed not to be usurious; tho' it was objected, that the Use ought not to be paid till the End of the Year. Page 109, 110.

To purchase Land at 20 l. per Annum, which is worth 60 l. is no Offence. Page 110.

Of usurious Contracts concerning Annuities. For 110 l. a Rent of 20 l. was granted by Deed for eight Years, and another for 20 l. for two Years, if *E. R.* and *T.* should so long live. This was alledged to be upon a Loan, therefore Usury: But a Bargain for

an Annuity is not usurious. Page

111.

A Bond for 120 *l.* to pay 20 *l.* *per Ann.* during the Obligee's, and Wife's and Son's Lives: This (being an absolute Bargain, in Consideration for the Payment of 20 *l. per Annum* during two Lives, and no Agreement to have the Principal Money) is not usurious: But if any Provision be made for Re-payment of the Principal, tho' not expressed within the Bond, it is usurious. Page 112.

F. gave to T. 566 *l.* for an Annuity of 120 *l. per Ann.* for twenty-three Years: This is not Usury, as there was no Communication before between them to have any Consideration for the Lending the 566 *l.* For this Annuity was purchased *bona fide*, without any corrupt Interest or Bargain. If it was 40 *l. per Ann.* for forty Years, for 100 *l.* it is not Usury, no more than a Purchase of Lands for 100 *l.* worth 40 *l. per Ann.* Page 113.

If a Man gives 100 *l.* for an Annuity of 20 *l. per Ann.* this is not Usury, for he shall never have the 100 *l.* again. *Ibid.*

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But

## A Summary, with Remarks.

But if *A.* desires *B.* to lend him 100 *l.* and for the Loan he will pay him above 5 *l.* for a Year, and to evade the Statute he grants 30 *l.* *per Annum* out of his Land for ten Years, or makes a Lease for one hundred Years to him, and the Lessee shall regrant it to him, upon Condition that he shall pay 30 *l.* yearly for ten Years; in this Case (the first Contract being corrupt in Fraud of the Statute) it is Usury, altho' he never has this 100 *l.* again. Page 114.

If *bona fide* one buys an Annuity of 40 *l.* for ten Years, for 100 *l.* this is not Usury, if the first Communication was not corrupt. *Ibid.*

Whether the second Contract will make void the first, or the first the second. A Man makes an usurious Contract, and agrees to give a Bond for the Principal, which by a subsequent Agreement he gives to *J. S.* to whom the Lender owes so much, in Satisfaction of his Debt; this Bond is not voidable by the Statute. Page 115.

If a Man lends Money for the legal Interest, and afterwards a subsequent Agreement is made for more Interest, which is Usury, that will not

not avoid the first Contract. Page 115, 116.

A corrupt Agreement, and a Bond for Money lent, was made in the Year 33, to be paid in 33; and afterwards in 35 a new Bond was made for Part of the first Sum: The latter is not a corrupt Bond, because the first was not. Page 116.

D. borrowed Money of P. and for Of conf-  
the Payment confessed Judgment. fessing  
D. to a *Sci. Fa.* upon the Judgment Judgment  
pleaded the Statute of Usury, to avoid for Prin-  
it. But this Judgment cannot be cipal and  
termed an Assurance, nor be avoided Interest.  
by such a Surmise; for if there had  
been any such Matter, D. might  
have pleaded it upon the Action,  
and not have suffered Judgment.  
Page 116, 117.

On an Indictment at the *Old Bailey* Of Ac-  
for Usury, the Judgment was reversed, tions, &c.  
because the Court has not Jurisdiction. concerning  
Usury.  
Page 67.

The like at *Hicks's Hall.* Page 68.

Action in the Court of *Ely.* Page 67.

In an Action of Debt on a Bond,  
the Statute of Usury pleaded. See  
Page 69, 70, 74, 82, 84, 85, 116.

I 2 Debt



## A Summary, with Remarks.

Debt on Counterbonds, and the Statute of Usury pleaded. *Page 88 to 95.*

Informations on the Statute of Usury. See *Page 71, 72, 73, 113, 114.*

Information on the Statute of Usury lies against a Pawn-Broker for refusing to deliver a Pawn without paying more than legal Interest. *Page 73, 74.*

What is an usurious Covenant, or not. *Page 75, 85.*

Error. *Page 81.*

Arrest of Judgment. *Page 82, 126, 130.*

Indictment on the Statute of Usury in the King's Bench. *Page 95, 115.*

The Plaintiff in Replevin, in Bar of the Avowry, pleaded the Statute of Usury. *Page 105, 111.*

The Defendant, in Debt on a Bond for an Annuity for Lives, pleaded the Statute of Usury. *Page 111.*

Upon a *Scire Facias* upon a Judgment, the Defendant pleaded the Statute of Usury. *Page 116.*

Indictment

Indictment quashed for want of Form. *Page* 125.

For an Action of Covenant on usurious Articles, the Defendant demurred, but should have pleaded the Statute. *Page* 118.

Usury pleaded in Debt on Bond, and Motion in Arrest of Judgment. *Page* 119.

Demurrer, where the Statute was pleaded ill. *Page* 119, 124.

Where the Statute is pleaded ill, to an Action on several Promises. *Page* 120.

In Debt on an usurious Bond, the Defendant pleaded the Statute: Plaintiff replied. Defendant rejoined, Plaintiff demurred. Upon which the Bar was held ill, because it was not pleaded that the Agreement was corrupt. *Page* 121. And see *Page* 122.

In an Information for Usury, a former Information pleaded. *Page* 123.

Where usurious Rents, &c. ought to be laid in an Information. *Page* 128.

An Information on the Statute for a Contract with Persons unknown, is ill. *Page* 136.

I 3 Time

## A Summary, with Remarks.

Time being given the Defendant to move in Arrest of Judgment, but in the Interim the Defendant procures an Injunction in Chancery, notwithstanding which the Court proceed, and granted Judgment and Execution. Page 137.

See Page 138, 139, 140. as to the Award of a *Venire Facias*.

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F I N I S.

FR

MUSEVM

BRITANNICVM

8

